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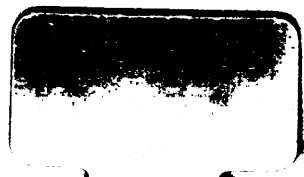
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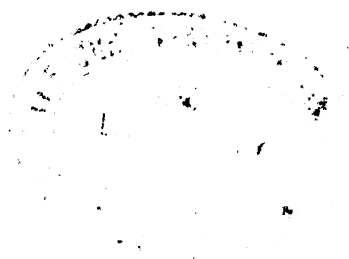
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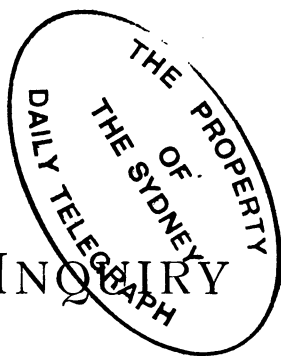






**THE PRACTICE OF THE COURTS OF
MARINE INQUIRY**

THE
PRACTICE
OF THE
COURTS OF MARINE INQUIRY
OF
NEW SOUTH WALES.



BEING
SO MUCH OF THE NAVIGATION ACT, 1901, AS RELATES TO
INQUIRIES, APPEALS, AND REFERENCES
CONCERNING
SHIPPING CASUALTIES,
THE INCOMPETENCY AND MISCONDUCT
OF CERTIFICATED OFFICERS,
AND THE
DETENTION OF UNSAFE SHIPS,
TOGETHER WITH
THE GENERAL RULES OF COURT
AND AN APPENDIX CONTAINING
THE FORMS OF PROCEDURE; THE REGULATIONS FOR PREVENTING COLLISIONS
AT SEA; THE ORDER IN COUNCIL WITH RESPECT TO COLONIAL
CERTIFICATES OF COMPETENCY; &C., &C.

By
J. M. A. BONTHORNE,
REGISTRAR OF THE METROPOLITAN COURT OF MARINE INQUIRY.

Sydney :
THE LAW BOOK COMPANY OF AUSTRALASIA, LIMITED,
SUCCESSORS TO C. F. MAXWELL (HAYES BROTHERS), LIMITED,
72 CASTLEREAGH STREET.

1906.

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Webster, Shoomith and Co Printers, Sydney.

PREFACE.

EVER since the establishment of the Courts of Marine Inquiry the necessity for a practice book in that jurisdiction has been constantly forced upon my attention during the course of my official duties

Some four years ago I commenced the preparation of this work, and, after many delays through the time I had planned to devote to it being taken up with more urgent matters, have only now been able to complete it. I had hoped that some one else would have undertaken the task, but the limited circle to which the book will appeal has probably acted as a deterrent.

If this little book serves the purpose for which it is intended, I shall be more than repaid for the labour spent upon it.

J. M. A. B.

Sydney, December, 1906.

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CONTENTS

CHAPTER I

	PAGE
THE NAVIGATION ACT, 1901, SO FAR AS IT RELATES TO THE COURT OF MARINE INQUIRY	1-28

CHAPTER II

GENERAL RULES OF THE COURT OF MARINE INQUIRY	29-42
---	-------

APPENDICES

1. The Court of Marine Inquiry Forms	43-47
2. The Regulations for Preventing Collisions at Sea	48-58
3. The Regulations for the Management of the Port of Sydney	59-66
4. Order in Council with respect to the Use, Issue, Delivery, Cancellation, and Suspension of Colonial Certificates of Competency	67-82
5. Board of Trade Recommendations as to the disposal of Suspended or Cancelled Certificates	83-85
6. Practice in England with regard to Appearance by persons other than parties to the Inquiry	86
7. Rules with regard to the Appointment and Summoning of Assessors	87-88

TABLE OF CASES.

	PAGE
<i>Adriatic</i> , 33 L. T. 102; 3 Asp. M. C. 16	15
<i>Aid</i> , 6 P. D. 84; 50 L. J. Adm. 40; 44 L. T. 843; 29 W. R. 614;	
4 Asp. M. C. 432	17
<i>Andalusian</i> , 3 P. D. 182; 47 L. J. Adm. 65; 39 L. T. 204; 27	
W. R. 172; 4 Asp. M. C. 22...	4
<i>Arizona</i> , 5 P. D. 123; 49 L. J. Adm. 54; 42 L. T. 405; 28 W. R.	
704; 4 Asp. M. C. 269	11
<i>Assyrian</i> , 63 L. T. 91; 6 Asp. M. C. 525	17
<i>Beryl</i> , 9 P. D. 137; 53 L. J. Adm. 75; 51 L. T. 554; 33 W. R. 191;	
5 Asp. M. C. 321	17
<i>Brown v. Board of Trade</i> , 18 Ct. of Sess. Cas. (4th Ser.) 291	11
<i>Charnock v. Dewings</i> , 3 C. & K. 378	35
<i>Cobbett v. Hudson</i> , 1 El. & Bl. 11; 22 L. J. Q. B. 11; 17 Jur. 481;	
1 W. R. 54	35
<i>Corbett v. Pearce</i> , (1904) 2 K. B. 422; 73 L. J. K. B. 885; 90 L. T.	
781; 68 J. P. 387; 20 T. L. R. 473...	4
<i>C. S. Buller</i> , L. R. 4 A. & E. 238; 31 L. T. 549; 23 W. R. 113; 2	
Asp. M. C. 408	4
<i>Dinorah and Dorunda</i> , 21 Sol. J. 9	35, 36
<i>Earl Spencer</i> , L. R. 4 A. & E. 431; 32 L. T. 370; 23 W. R. 661;	
2 Asp. M. C. 523. Affirmed: 33 L. T. 235; 3 Asp. M. C. 4	17
<i>Emmy Haase</i> , 9 P. D. 81; 53 L. J. Adm. 43; 50 L. T. 372; 32	
W. R. 880; 5 Asp. M. C. 216	15
<i>Ewer v. Board of Trade</i> , 7 Ct. of Sess. Cas. (4th Ser.) 835	12
<i>Famenoth</i> , 7 P. D. 207; 48 L. T. 28; 5 Asp. M. C. 35	11
<i>Ferguson, Ex p.</i> , L. R. 6 Q. B. 280; 40 L. J. Q. B. 105; 24 L. T. 96;	
19 W. R. 746; 1 Asp. M. C. 8	4, 14, 15, 27
<i>Fred</i> , 72 L. T. 153; 7 Asp. M. C. 550	17
<i>Fuller v. Prentice</i> , 1 H. Bl. 49; 2 R. R. 715	34
<i>Gleaner</i> , S. M. H. 20th July, 1900	40
<i>Golden Sea</i> , 7 P. D. 194; 51 L. J. Adm. 64; 47 L. T. 579; 30 W. R.	
482; 5 Asp. M. C. 23	12
<i>Granfelt v. Lord Advocate</i> , 1 Ct. of Sess. Cas. (4th Ser.) 782	21, 24, 25
<i>Hannibal and Queen</i> , L. R. 2 A. & E. 53; 37 L. J. Adm. 12	15, 18

	PAGE
<i>Ivo</i> , 1 Sp. E. & A. 184	17
<i>Kestrel</i> , 6 P. D. 182; 45 L. T. 111; 30 W. R. 182; 4 Asp. M. C. 433	12, 17, 18, 41
<i>Kirby Hall</i> , 8 P. D. 71; 52 L. J. Adm. 31; 48 L. T. 797; 31 W. R. 658; 5 Asp. M. C. 90	17
London Chartered Bank v. Lavers, <i>S. M. H.</i> , 26th July, 1855; 2 Legge 884	35
<i>Mac</i> , 7 P. D. 126; 51 L. J. Adm. 81; 46 L. T. 907; 4 Asp. M. C. 555	4
<i>Magna Charta</i> , 25 L. T. 512; 1 Asp. M. C. 153	17
<i>Nimrod</i> , 14 Jur. 942	17
<i>Oakes v. Monkland Iron Co.</i> , 21 Sc. L. R. 407... ..	4
<i>Outram v. Outram</i> , (1877) W. N. 75	35
<i>Self v. Isaacson</i> , 1 F. & F. 194	36
<i>Setterfield, Ex p.</i> , 21 N. S. W. L. R. 331; 17 W.N. 174	10
<i>Sir Robert Peel</i> , 43 L. T. 364; 4 Asp. M. C. 321	17
<i>Story, Ex p.</i> , 3 Q. B. D. 166; 47 L. J. Q. B. 266; 38 L. T. 29; 26 W. R. 329; 3 Asp. M. C. 549	11
<i>Swanland</i> , 2 Sp. E. & A. 107	17
<i>Vigilant</i> , 21 Sol. J. 31	40

CHAPTER I.

THE NAVIGATION ACT, 1901,

SO FAR AS IT RELATES TO THE COURT OF MARINE INQUIRY

(Act No. 60, 1901.)

An Act to consolidate the Acts relating to Navigation.

[Assented to, 19th December, 1901.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Preliminary.

1. This Act may be cited as the "Navigation Act, 1901," and is divided into Parts and Divisions, as follows:—

* * * * *

2. (1) The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

Repeal.
First
Schedule.

(2) All persons appointed under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed hereunder.

Officers under
Acts hereby
repealed.

(3) All rules, rules of Court or regulations duly made and all forms duly prescribed under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made or prescribed under the authority of this Act.

Rules of
Court, regu-
lations, and
forms under
Acts hereby
repealed.

Section 2

Proclamations, authorities, &c., under Acts hereby repealed.

(4) All proclamations duly made, authorities duly given, leases or licenses duly granted, and certificates duly issued, and all acts or things duly done under the authority of any Act hereby repealed shall be deemed to have been made, given, granted, issued or done under the corresponding provisions of this Act, but at the date at which the same respectively were in fact made, given, granted, issued or done.

Interpretation.

35 Vic. No. 7, s. 4.

36 Vic. No. 30, ss. 2, 3.

45 Vic. No. 6, s. 21 (4).

Act No. 32, 1899, s. 45.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

“British Possession” means any part of His Majesty’s dominions exclusive of the United Kingdom; and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British Possession;

“coast-trade ship” means every registered British ship employed in trading or going between any ports within the Jurisdiction, also every registered steam-tug:

Provided that every such ship employed in trading between any ports of adjacent States shall be deemed to be a coast-trade ship for such purposes of this Act as the Superintendent may deem fit;

“foreign-going ship” means every registered British ship employed in trading or going between any port within and any port without the Jurisdiction;

“harbour-master” means any duly appointed harbour master or assistant harbour-master; and, in any harbour, river, or place where there is no appointed harbour-master, the pilot stationed there;

“justice” means any justice of the peace;

“legislature” when used with respect to a British **Section 3**

Possession means the authority other than the Imperial Parliament or His Majesty the King in Council competent to make laws for a British Possession ;

“master” means every person except a pilot having command or charge of any ship ;

“Merchant Shipping Act” means the Imperial Act, the Merchant Shipping Act, 1894, or any Act amending the same or in substitution therefor ;

“owner” includes the manager or secretary of any body corporate or company ;

“passenger” means every person carried in any ship other than the master and crew, and the owner of the ship and his family and servants ;

“pilot” means any person not belonging to a ship who has the conduct thereof ;

“port” includes place ;

“qualified pilot” means any person duly licensed by this Act to conduct ships to which he does not belong ;

“ship” means every description of vessel used in navigation not propelled by oars ;

“Superintendent” means the Superintendent of the Department of Navigation appointed under this Act ;

“the Jurisdiction” means the navigable waters lying within one nautical league of the coast and the inland navigable waters of New South Wales ;

any reference to failure to do any act or thing shall include a reference to refusal to do that act or thing.

**Note to
Section 3**

Ship.—Ship is similarly defined in the Merchant Shipping Act. It seems to have been at first thought that a vessel was not a ship within the meaning of that Act unless she went to sea (*Ex p. Ferguson*, L. R., 6 Q. B., 280; *The C. S. Butler*, L. R., 4 A. & E., 238). It has since been decided, however, that it is not necessary that she should be sea-going (*The Mac*, 7 P. D., 126; *Corbett v. Pearce* [1904] 2 K. B., 422); but in order to come within the definition of "ship" in this section, the vessel must be used in "navigation" in the fair and proper sense of the term. And, therefore, a steam launch plying on an artificial piece of water half a mile long has been properly held not to be a vessel used in navigation (per Kennedy, J., *Corbett v. Pearce*, *supra*; and see *Oakes v. Monkland Iron Co.*, 21 Sc. L. R., 407).

A fishing coble which was sometimes propelled by oars has been held to be a ship (*Ex p. Ferguson*, *supra*); so also a hopper barge which was not provided with any means of propulsion, but was used for dredging purposes, and was generally towed when in actual use. "In popular language, ships are of different kinds—barques, brigs, schooners, sloops, cutters. The word includes anything floating in or upon the water built in a particular form and used for a particular purpose. In this case the vessel, if she may be so called, was built for a particular purpose. She was built as a hopper-barge, she has no motive-power, no means of progression within herself. Towing alone will not conduct her, she must have a rudder, and therefore she must have men on board to steer her. Barges are vessels in a certain sense; and as the word "ship" is not used in a strictly nautical meaning, but is used in a popular meaning, I think that this hopper-barge is a "ship." She is not propelled by oars. The interpretation clause of the Merchant Shipping Act, 1854 (s. 2) does not limit the meaning: it enlarges it. This hopper-barge is used for carrying men and mud; she is used in navigation; for to dredge up and carry away mud and gravel is an act done for the purposes of navigation. Supposing that a saloon barge, capable of carrying 200 persons, is towed down the river Mersey in order to put passengers on board vessels lying at the mouth; she would be used for the purposes of navigation, and I think it equally true that the hopper-barge was used in navigation" (*The Mac*, 7 P. D., per Brett, L. J., at p. 130).

A newly-launched vessel, which had not yet been fitted out with means of propulsion, has also been held to be a ship (*The Andalusian*, 3 P. D., 182).

Steam-Vessel.—The word *steam-vessel* includes any vessel propelled by machinery (see Regulations for Preventing Collisions at Sea, "Preliminary," Appendix 2, *post*).

British Ship.—See note to s. 27, *post*.

4. Nothing in this Act contained shall apply to any ship belonging to or in the service of His Majesty. **Section 4**

5. Nothing in this Act contained shall be construed to repeal or affect any provision of the Sydney Harbour Trust Act, 1900, or any regulation thereunder; and where any provision of this Act appears to be inconsistent with any provision of the said Act or of any such regulation, such provisions shall be construed as if this Act had been passed immediately prior to the passing of the said Act.

Act not to apply to His Majesty's ships.
35 Vic. No. 7, s. 4.
Act not to affect Sydney Harbour Trust Act, 1900.

PART III.

The Court of Marine Inquiry.

23. There is hereby conferred upon such District Courts as may be proclaimed by the Governor for the purpose jurisdiction to hear and determine inquiries, appeals, and references under this Act, under and according to the terms and provisions of the District Courts Act, 1901, and any Act amending the same (so far as they are applicable), and of this Act; and a District Court exercising such jurisdiction shall be a court of record, and be called a Court of Marine Inquiry.

Courts of Marine Inquiry.
Act No. 32, 1899, s. 6.

By a proclamation published in a supplement to the *Gov. Gaz.* (No. 299) of the 3rd April, 1900, the District Courts within the Metropolitan, Suburban and Hunter District, as it was then called, were proclaimed Courts of Marine Inquiry. At that time the Courts holden at the following places were within that district, viz.: Sydney, Newcastle, Maitland, Singleton, Muswellbrook, Parramatta, Windsor, Penrith, and Campbelltown. Up to the present inquiries have only been held at Sydney and Newcastle, and it is unlikely that the Court will sit at any of the other places mentioned.

Inquiries.—The Court has jurisdiction to make inquiries as to shipwrecks and other casualties affecting British ships, or as to charges of incompetency or misconduct on the part of masters, mates, or engineers of such ships, in the cases mentioned in s. 27, *post*.

Appeals and References.—As to the jurisdiction of the Court to hear and determine appeals or references in respect of the detention under s. 98, *post*, of ships alleged to be unsafe, see ss. 32 and 100 (2), *post*.

**Note to
Section 23**

The Governor may appoint a stipendiary or police magistrate to sit as a Judge of a Court of Marine Inquiry for the purpose of hearing and determining an appeal, but not in the case of a reference. See s. 100 (1), *post*.

Procedure—Inquiries.—At the request of the Colonial Treasurer, or without such request if it thinks fit, the Court may make inquiry under s. 27, *post* (*ib.*, sub-s. 5). Proceedings are usually commenced by the filing of a request from the Colonial Treasurer; the time for holding the inquiry is then appointed by the Judge; and the Registrar, as soon as he has ascertained the names of the parties, thereupon issues the notice of inquiry (F. 5) for service on the parties as directed by R. 6, *post*. As to who are to be deemed to be parties to the proceedings, see R. 7, *post*; and as to appearance by leave of the Court, see R. 8, *post*.

As to proceedings in Court, see RR. 17-20, *post*.

The District Courts Acts, and rules thereunder, apply to inquiries, appeals, references, and re-hearings, except in so far as they conflict with the rules of the Court of Marine Inquiry (s. 23, *ante*, and R. 39, *post*). And so far as the rules do not extend, the presiding Judge may, in any particular case, give such directions as may seem fit (s. 26, *post*).

As to summoning the parties, and compelling the attendance of witnesses, the Court has all the powers of the Supreme Court (s. 27, sub-s. 5, *post*).

Re-hearing.—The Governor may order a re-hearing of any inquiry, either generally or in part, and shall do so (a) if new and important evidence, which could not be produced at the inquiry, has been discovered, or (b) if for any other reason there is ground, in his opinion, for suspecting a miscarriage of justice (s. 29, *post*).

Appeals or References.—The procedure on the hearing and determining of appeals or references shall be the same as in the case of inquiries (s. 32, sub-s. 1, *post*).

An appeal is commenced by the owner or master filing a notice of appeal under s. 99 (R. 3, *post*). Such appeal must be commenced within seven days after the service upon the master of the copy of the report of the survey of the ship (s. 99, *post*). As soon as the notice of appeal is filed the Registrar must immediately communicate the fact to the Judge (R. 3, *post*), and, when the time for hearing has been fixed, forthwith send notice thereof to the Superintendent and the appellant (R. 4, *post*).

As to proceedings in Court, see RR. 21-25, *post*.

As soon as possible after the decision, the Court shall issue an order for the release or detention (either finally or on condition) of the vessel (R. 26, *post*).

Where a ship has been provisionally detained the Treasurer **Note to Section 23** may at any time, if he thinks it expedient, refer the matter to the Court (s. 100, sub s. 2) Thereafter the procedure will be same as in the case of an appeal.

Costs.—As the Court has jurisdiction to hear and determine inquiries, appeals, and references, under and according to the terms and provisions of the District Courts Acts, it follows that, as in the District Court, the costs of the proceedings are in the discretion of the Judge (see s. 105, District Courts Act, 1901); but, it should be remembered, in the absence of any order as to costs, they will not abide the result (see R. 32 and note thereto, *post*).

Taxation of Costs.—Where the costs are not assessed by the Court, they shall be taxed on one of the scales provided by the District Court Rules; and the Court shall direct on what scale the taxation shall take place (R. 33, *post*).

In What Cases Awarded.—See note to R. 32, *post*.

24. (1) Any one or more of the District Court Judges may sit as a Court of Marine Inquiry, and shall be assisted by two of the assessors appointed under this Act; such assessors shall have power to advise, but not to adjudicate, on any matter before the Court. **District Court Judges to preside. Ibid. s. 7.**

(2) Where an inquiry involves or appears likely to involve any question as to the cancelling or suspension of the certificate of a master, mate, or engineer, the Court shall hold the inquiry with the assistance of not less than two assessors having experience in the merchant service. **Inquiry involving cancellation of certificate. Ibid. s. 16 (2).**

It appears to be doubtful whether a District Court Judge can preside at a Court of Marine Inquiry outside of the district in which he ordinarily exercises jurisdiction. The practice in such a case has been to issue a special commission to the Judge, but now the authorisation may be given by the Minister [s. 4, District Courts (Amendment) Act, 1905].

Duties of Judges and Assessors.—See note to s. 30, *post*.

Appointment of Assessors.—S. 18. (1) Persons of nautical, engineering, or other special skill or knowledge shall be appointed as assessors to assist in a Court of Marine Inquiry. (2) Such appointments shall be made out of a list of persons for the time being approved for the purpose by the Governor, and according to such regulations as may be prescribed by rules made by the Governor. (3) Such list shall be in force for one year only, but persons whose names are on any such list may be approved for

**Note to
Section 24**

any subsequent list. The Governor may at any time add or withdraw the name of any person to or from the list. (4) The Governor may make rules with regard to the appointment and summoning of assessors, and such rules shall have effect as if enacted in this Act.

For the rules as to the appointment and summoning of assessors, see Appendix 7, *post*.

**Officers
Ibid. s. 8.**

25. All officers of the said District Courts shall act as officers of Courts of Marine Inquiry.

The officer of the District Court performing for the time being the duties of Registrar of that Court shall act as Registrar of the Court of Marine Inquiry (R. 42, *post*).

**Power to
make rules.
Act No. 32,
1899, s. 9.**

26. (1) The Judges of the District Courts, or any three of them, may make rules to regulate the procedure and practice of Courts of Marine Inquiry, and such rules shall have the same force and effect as if they had formed a part of this Act, notwithstanding that they may conflict with the provisions of the District Courts Act, 1901, or any Act amending the same.

(2) Rules made as aforesaid shall be published in the Gazette, and shall take effect from the date of publication.

**Supplemental
powers.**

(3) Until rules are made and published under this section, or so far as such rules do not extend, the presiding Judge may, in any particular case, give such directions as may seem fit.

For the rules made under the provisions of this section, see Chapter II., *post*.

**Matters in
respect of
which Court
may hold
inquiry.
Ibid. s. 10.**

27. (1) A Court of Marine Inquiry is hereby authorised to make inquiries as to shipwrecks and other casualties affecting ships, or as to charges of incompetency or misconduct on the part of masters, mates, or engineers of ships in the following cases, namely:—

- (a) where a shipwreck or casualty occurs to a British ship on or near the coast of New South Wales or in the course of a voyage to a port within New South Wales;

- (b) where a shipwreck or casualty occurs in any **Section 27** part of the world to a British ship registered in New South Wales.
- (c) where some of the crew of a British ship which has been wrecked or to which a casualty has occurred and who are competent witnesses to the facts are found in New South Wales;
- (d) where the incompetency or misconduct has occurred on board a British ship on or near the coasts of New South Wales, or on board a British ship in the course of a voyage to a port within New South Wales;
- (e) where the incompetency or misconduct has occurred on board a British ship registered in New South Wales;
- (f) where the master, mate, or engineer of a British ship who is charged with incompetency or misconduct on board that British ship is found in New South Wales.

(2) The said Court shall have the same **jurisdiction**. Jurisdiction. tion over the matter in question as if it had occurred within its ordinary jurisdiction, but subject to all (*sic*) provisions, restrictions, and conditions as would have been applicable if it had so occurred.

(3) An inquiry shall not be held under this **sec-** **Ouster of jurisdiction.** tion into any matter—

- (a) which has once been the subject of an investigation or inquiry, and has been reported on by a competent court or tribunal in any part of His Majesty's dominions; or
- (b) with reference to which an investigation or inquiry has been commenced in the United Kingdom; or
- (c) in respect of which the certificate of a master, mate, or engineer has been cancelled or sus-

Section 27

pended by a naval court constituted under the Merchant Shipping Act.

Cancellation of certificates.

(4) The said Court, holding an inquiry under this section, shall have the same powers of cancelling and suspending certificates, and shall exercise those powers in the same manner as a court holding a similar investigation or inquiry in the United Kingdom.

Summoning of parties and witnesses.

(5) The said Court, for the purposes of any inquiry under this section, shall, so far as relates to the summoning of parties, and compelling the attendance of witnesses, have all the powers of the Supreme Court.

"British Ship."—Although "ship" is defined in s. 3 as including "every description of vessel used in navigation not propelled by oars," there appears to be no express definition in any imperial or local statute of "British ship." But a British ship requires the following qualifications:—(a) She must be wholly owned by persons qualified to be owners of British ships, (b) and, unless exempted from registry, must be registered in the United Kingdom or elsewhere in the British dominions. Otherwise she shall not be deemed to be, and shall not be recognised as, a British ship. See ss. 1 and 2, Merchant Shipping Act.

Neither the place of construction of the ship nor the trade in which she is engaged are material; her ownership is vital.

His Majesty's Ships.—Ships belonging to or in the service of His Majesty are exempted from the operation of this section (s. 4, *ante*).

Master and Pilot.—Master means every person except a pilot having command or charge of any ship; and a pilot is a person not belonging to a ship who has the conduct thereof (s. 3, *ante*).

Cancelling and Suspending Certificates.—S. 470 of the Merchant Shipping Act, 1894, sub-s. 4, provides that a certificate shall not be cancelled or suspended by a Court under that section, unless a copy of the report, or a statement of the case on which the investigation has been ordered, has been furnished before the commencement of the investigation or inquiry to the holder of the certificate. The *report* referred to is a report made by a Court holding a formal investigation under s. 466 (6), or the report of the local Marine Board mentioned in s. 471; and the *statement of the case* is a statement made by a person asking for a formal investigation under s. 466 (1), and superintending the management of the case under s. 466 (5). These provisions, however, do not apply to a Court of Marine Inquiry in this State (*Ex p. Setterfield*, 21 N. S. W. L. R., 331).

The inquiry is usually held at the request of the Colonial Treasurer, but the Court may in any case where it thinks fit, without being moved by any party, hold any inquiry under this section (s. 28, *post*).

When Certificate may be Cancelled or Suspended.—The certificate of a master, mate, or engineer may be cancelled or suspended—

- (a) by a Court holding an inquiry into a shipping casualty, if the Court finds that the loss or abandonment of or serious damage to any ship, or loss of life, has been caused by his wrongful act or default :
- (b) by a Court holding an inquiry into the conduct of a master, mate, or engineer, if it finds (1) that he is incompetent, or has been guilty of any gross act of misconduct, drunkenness, or tyranny ; or (2) that in a case of collision the master or person in charge has failed to render such assistance or give such information as is required under the Fifth Part (s. 422) of the Merchant Shipping Act, or under s. 120 of the Navigation Act, 1901 (s. 470, Merchant Shipping Act).

The Court has no power, on an inquiry into a shipping casualty, to cancel or suspend a certificate unless it can make the finding in paragraph (a), *supra*. So, where a ship stranded and was got off without serious damage or loss of life, it was held that though there was jurisdiction to inquire into the casualty, there was no jurisdiction to deal with the master's certificate (*Ex p. Story*, 3 Q. B. D., 166).

There does not appear to be any judicial interpretation of the words "serious damage." And it has been ascertained that the Board of Trade have been advised that it is a question of fact, to be decided in each case, as to whether serious damage has been occasioned.

The casualty must be actually caused or contributed to by the master to enable the Court to suspend his certificate (*The Arizona*, 5 P. D., 123). And a mere error of judgment on the part of a master at a moment of great difficulty and danger does not amount to a wrongful act or default, so as to justify the suspension or cancellation of the master's certificate (*The Famenoth*, 7 P. D., 207).

Wrongful Act or Default.—On appeal, the following have been held to be wrongful acts or defaults for which a certificate may be properly dealt with :

- (a) Failure of the master to take reasonable steps for the safety of passengers during an unreasonable panic (*Brown v. Board of Trade*, 18 Ct. of Sess. Cas. [4th Ser.], 291) ;

**Note to
Section 27**

- (b) A master leaving the bridge, whilst his vessel was proceeding through a narrow channel, to call the second mate—the first mate was left on the bridge (*Ever v. Board of Trade*, 7 Ct. of Sess. Cas. [4th Ser.], 835);
- (c) Negligent navigation during foggy weather—the course set might have been right to steer upon in clear weather (*The Kestrel*, 6 P. D., 182);
- (d) Taking in improper ballast which, being converted into mud by admixture with water made during the voyage, so choked the pumps that they could not be used, whereby the ship foundered (*The Golden Sea*, 7 P. D., 194).

The following instances of conduct have been held, at inquiries conducted in England and in this State, to amount to a wrongful act or default:

1. *On the part of a Master—*

- Carrying improper lights;
- Improper stowage of cargo;
- Proceeding to sea without a chart;
- Setting an improper course;
- Improperly altering the course without blowing the whistle;
- Misleading the master of another vessel by blowing improper signal;
- Neglecting to navigate with due caution;
- Neglecting to navigate with proper and seamanlike care;
- Neglecting to use the lead;
- Neglecting to maintain a proper look-out;
- Neglecting to keep hatches open with a cargo of coal;
- Neglecting to use the log to ascertain speed;
- Neglecting to allow for the set of the tide in verifying the position of his vessel, from time to time, on the course set;
- Neglecting to take cross-bearings of lights;
- Neglecting to verify deviation of compass;
- Neglecting to cause pumps to be worked with sufficient promptitude, continuity, and vigour, at a critical time;
- Neglect of duty and navigation through excessive indulgence in intoxicating liquor;
- Absence from the deck when the safety of his vessel required his personal supervision.

2. *On the part of a Mate—*

- Altering the course without or contrary to the orders of the master;

- Reckless navigation in proximity to a reef, and neglecting to call the master ;
- Neglecting to keep a proper look-out during his watch ;
- Neglect of duty and navigation through excessive indulgence in intoxicating liquor ;
- Neglecting to keep the course set by the master.
- Note to
Section 27

3. *On the part of an Engineer—*

- Neglecting to see that the sea-cocks were properly closed ;
- Neglecting to maintain proper discipline in the engine-room ;
- Neglecting to attend to defective screwed cover of lower water-valve ;
- Neglecting to examine the belt of the dynamo, and neglecting to inform the master that the electric light had failed ;
- Neglecting to test the density of the water in the boilers ;
- Neglecting an incrustation of salt formed on the top of the furnace, in consequence of which it collapsed ;
- Neglecting to examine the pistons and other parts of the engines.

A wrongful act or default causing the loss or abandonment of or serious damage to a ship, or loss of life, may also arise in respect of acts constituting an offence against the criminal law or in respect of the neglect of some obligation imposed upon the officer by the imperial or local statute ; *e.g.*, the master or person in charge failing, in a case of collision, to render the assistance or give the information required by s. 422 of the Merchant Shipping Act, and s. 120, *post*.

Incompetency or Misconduct.—As before noted, a Court holding an inquiry into the conduct of a master, mate, or engineer, may cancel or suspend his certificate if it finds that he is incompetent, or has been guilty of any gross act of misconduct, drunkenness, or tyranny. To give the Court jurisdiction it is not necessary to prove that the incompetency or misconduct has caused the loss of or serious damage to a ship, or loss of life.

The incompetency which may be the subject of investigation has been deemed to be not merely professional incompetency, but incompetency from mental or even physical incapacity. It is obviously dangerous in the highest degree to permit a person to hold command of a ship, or to entrust the lives of others to his care, whose conduct or actions prove him to be mentally or physically unfit to discharge his duties (Murton, p. 140).

It will be observed that the misconduct, drunkenness, or tyranny must be gross. In an inquiry held by the Metropolitan

**Note to
Section 27**

Court, the certificate of a master who was found guilty of drunkenness on many occasions, while on a voyage from Antwerp to Sydney, was suspended for six months.

The jurisdiction to hold the inquiry is conferred by s. 27 (1), *ante*.

Failure to Render Assistance or Give Information in Cases of Collision.—(1) In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any)—

- (a) to render to the other vessel, her master, crew, and passengers (if any) such assistance as may be practicable, and may be necessary to save them from any danger caused by the collision, and to stay by the other vessel until he has ascertained that she has no need of further assistance, and also
- (b) to give to the master or person in charge of the other vessel the name of his own vessel and of the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

(2) If the master or person in charge of a vessel fails to comply with this section, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.

(3) If the master or person in charge fails without reasonable cause to comply with this section, he shall be guilty of a misdemeanour, and, if he is a certificated officer, an inquiry into his conduct may be held, and his certificate cancelled or suspended (s. 422, Merchant Shipping Act; and see s. 120, *post*).

In every case of collision, in which it is practicable so to do, it is the duty of the master to make any entry of the circumstances in the official log-book, which entry must be signed by him and also by the mate or one of the crew (s. 423, *ib.*).

Jurisdiction.—The provisions of sub-s. 3 of s. 422, *supra*, conferring jurisdiction to hold an inquiry into the conduct of a *person in charge* have not been adopted by the local statute. A Court of Marine Inquiry in this State may only deal with the certificate of a master, mate, or engineer; but, subject to that limitation, it has the same powers of cancelling and suspending certificates, and it must exercise those powers in the same manner, as a Court holding a similar investigation or inquiry in the United Kingdom (s. 27, sub-ss. 1, 5, *ante*).

Vessel.—The word “vessel” in s. 422, was inserted in the Merchant Shipping Act (1873) instead of the word “ship” to get rid of the doubt which was raised in *Ex p. Ferguson* (L. R., 6 Q. B.,

281). In that case it was decided that a fishing coble of ten tons burden was a ship. For definition of a ship, see s. 3, *ante*.

Note to
Section 27

Person in Charge.—The words include a mate when the master is below (*Ex p. Ferguson, supra*).

Duty of Standing by and Rendering Assistance.—This provision was introduced at the instance of Lord Kingsdown, in consequence of some case which came within his cognisance while sitting in the Judicial Committee of the Privy Council, in which, after a collision, one ship sailed away and left the other to perish. The clear object of the clause is to meet with deserved penalty and punishment such a transgression (*per* Phillimore, J., *The Hannibal*, L. R. 2 A. & E. at p. 56).

The duty is not discharged by a steamship, where, it being practicable and safe to lower a boat to render assistance, although possibly dangerous to stay by the injured ship, she continues her voyage without lowering her boat, and merely hails and signals for other vessels to go to the assistance of the other ship (*The Adriatic*, 33 L. T., 102). If his ship is so seriously damaged in the collision that the master is not in a position to stand by and render assistance, he must yet return the signals of the other ship, and will be held to blame for not doing so (*The Emmy Haase*, 9 P. D., 81).

Procedure.—See s. 30, and note thereto, *post*.

Summoning Parties and Compelling Attendance of Witnesses.—The Court has all the powers of the Supreme Court so far as relates to the summoning of parties and compelling the attendance of witnesses (sub-s. 5.) These powers would seem to be, as regards the summoning of parties, the power of issuing writs commanding the parties to appear, &c., and as regards the compelling the attendance of witnesses, the powers given in the Evidence Act of 1898. By s. 12 of that Act persons present in court are made liable to give evidence and produce documents under penalty of attachment. In the case of persons bound by recognizance or served with a subpoena failing to attend, &c., they are liable in the case of a recognizance, to execution on the recognizance, and in the case of a subpoena to attachment for disobedience (see ss. 13, 14, *ib*).

28. A Court of Marine Inquiry shall, when requested by the Colonial Treasurer and may in any case where it thinks fit, make any inquiry under the last preceding section.

When Court
to make in-
quiry.
Act No. 32,
1899, s. 11.

All the inquiries that have been held up to the present have been at the request of the Colonial Treasurer.

Note to Section 28 **Notice of Inquiry.**—When the time and place for holding an inquiry have been fixed by the Court, the Registrar should cause notice thereof to be served upon the Superintendent, and the owner, master, &c., as directed by R. 6, *post*.

Parties to Inquiries.—See RR. 7 and 8, *post*.

Proceedings in Court.—See RR. 17-20, *post*.

Rehearing of
inquiry at
instance of
Governor.
Ibid. s. 12.

29. The Governor may, where any such inquiry as aforesaid has been made, order the case to be reheard by a Court of Marine Inquiry, either generally or as to any part thereof, and shall do so—

- (a) if new and important evidence, which could not be produced at the inquiry, has been discovered;
- (b) if for any other reason there has, in the opinion of the Governor, been ground for suspecting that a miscarriage of justice has occurred.

Rehearing.—The provisions respecting rehearings in the English and local statutes are similar in every respect except as to the authority in whose hands the power to order the rehearing is placed. Up to the present in no case has a rehearing been ordered in this State. In England, the Board of Trade have ordered rehearings for the following reasons: that (a) the Board were dissatisfied with the decision of the Court; (b) a mistake was made by the Court in giving its decision; (c) new and important evidence was forthcoming; and (d) there had been a miscarriage of justice. This information has been obtained from the notes of cases reported in Murton's Wreck Inquiries (1884), at p. 189. The source of information is the only one readily available, but, as it is far from being up-to-date, it will be understood that there may be cases where the Board of Trade have ordered rehearings for reasons other than those stated.

Time and Place of Rehearing.—Where a rehearing has been directed by the Governor, the Judge is to fix a time and place for the same, and notice thereof shall be given by the Registrar to the parties affected by the order for rehearing (R 28, *post*).

Procedure.—See RR. 29-31, *post*; and the next section.

Presiding
Judge
Ibid. s. 13.

30. (1) The senior District Court Judge present shall preside at any sitting of a Court of Marine Inquiry.

THE COURT OF MARINE INQUIRY

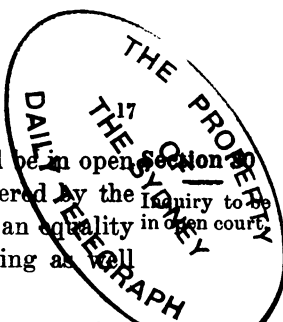
(2) Every inquiry under this Act shall be in open court. The decision of the Court shall be delivered by the presiding Judge in open court. In the event of an equality of votes the presiding Judge shall have a casting as a deliberative vote.

(3) The presiding Judge shall in every case forward to the Governor a copy of the decision of the Court, together with notes of the evidence given; and any member of the Court who dissents from the decision may likewise forward his written reasons for so dissenting.

Constitution of Court.—Any one or more of the District Court Judges may sit as a Court of Marine Inquiry, and shall be assisted by two assessors. See s. 24, and note thereto, *ante*.

Duties of Judges and Assessors.—The assessors have power to advise but not to adjudicate on any matter before the Court (s. 24, *ante*). In case of a difference of opinion between the Judge and the assessors, the Judge is not at liberty to act upon any inferences which they may draw from the evidence, except they accord with his own. It is the duty of the Judge to decide the case on his own responsibility (*The Magna Charta*, 25 L. T., 512). Even in purely nautical matters he is not bound to follow the advice of his assessors, if it does not agree with his own opinion (*The Aid*, 6 P. D., 84; *The Beryl*, 9 P. D., 137; *The Swanland*, 2 Sp. E. & A., 107; *The Fred*, 72 L. T., 153); but "it would be impertinent in a Judge not to consider as almost binding upon him the opinion of the nautical gentlemen who, having ten times his own skill, are called in to assist him" (*Per Brett, M. R., The Beryl, supra*).

Matters of Nautical Skill and Knowledge.—It seems that in any Court where assessors are present to advise the Court, evidence as to matters of nautical skill and knowledge is not admissible (see *The Assyrian*, 63 L. T., 91; *The Kirby Hall*, 8 P. D., 75; *The Earl Spencer*, L. R., 4 A. & E., 431; *The Ivo*, 1 Sp. E. & A., 184; *The Sir Robert Peel*, 43 L. T., 364; *The Nimrod*, 14 Jur., 942). And in appeals under the Shipping Casualties Investigations Act, 1879, the Court of Appeal would not permit witnesses to be called to give evidence of this kind (*The Kestrel*, L. R., 6 P. D., 182). In that case the President (Sir James Hannen) is reported (at p. 189) to have said: "I have been informed what the practice of the Admiralty Division is with respect to evidence of this kind, and it commends itself to my judgment, and I think that we ought to adopt it in these appeals. We have nautical



**Note to
Section 30**

assessors whose duty it is to advise us in these matters, and, apart from other objections, I can conceive that the admission of such evidence would inconveniently add to the length of the hearing in these cases. We refuse to allow the proposed witnesses to be called."

Proceedings in Court.—See R.R. 16-27, *post*. Following the practice of the Admiralty Division (see *The Hannibal and Queen*, L. R., 2 A. & E., 53) the presiding Judge does not sum up, but retires with the assessors, and on their return the decision of the Court is given.

Decision of the Court.—For form of decision of the Court, see Form 8, *post*.

The assessors having no power to adjudicate (s. 24, *ante*), it is not competent to them to dissent from the decision of the Court under s. 30 (3). But on any appeal or reference in respect of the detention of a ship alleged to be unsafe, at least one of the assessors must concur in making an order for the detention of a ship, and each assessor must either sign the report, or report to the Governor his reasons for dissenting (s. 32, *post*).

The decision, it will be noted, must be given in open Court, but need not be accompanied by reasons. If reasons are given the parties will not be entitled to a copy of the shorthand-writer's notes of those reasons (*The Kestrel*, 6 P. D., 182).

A copy of the decision must be forwarded to the Governor (sub-s. 3); and a full report on the case must be sent to the Board of Trade, and also, where a colonial certificate is cancelled or suspended, to the authority by whom the certificate was granted (s. 470, sub-s. 3, Merchant Shipping Act; Order-in-Council, Reg. 12, Appendix 4, *post*). As Reg. 9 (*ib.*) provides that cancellation or suspension of a certificate shall involve cancellation or suspension of all other certificates possessed by its owner, it is desirable that the Court should endeavour to ascertain and should specify in the decision the particulars of the other certificates (if any) held by him.

Where a master's or officer's certificate has been cancelled or suspended, any party to the proceedings may obtain a copy of the decision (R. 35, *post*).

No Appeal.—There appears to be no appeal to the Supreme Court from the decision of a Court of Marine Inquiry, but prohibition will lie if the Court acts without jurisdiction.

Notes of Evidence.—Notes of the evidence are usually taken by the official shorthand-writer, an oath being first administered to him by the presiding Judge to truly take down the evidence and transcribe his notes to the best of his skill and ability; and the transcript is sent to the Governor with the

decision of the Court—a duplicate being filed of record in the Note to office of the Registrar. A duplicate of the transcript must also Section 80 be sent to the Board of Trade (s. 470, sub-s. 3, Merchant Shipping Act), and, where a colonial certificate has been cancelled or suspended, a copy to the authority by whom the certificate was granted (Order-in-Council, Reg. 12, Appendix 4, *post*).

Disposal of Cancelled or Suspended Certificates.—If the certificate is one which has been issued in this State it should be sent to the Superintendent (Reg. 12, Order-in-Council, Appendix 4, *post*), and by him be retained until, if cancelled, its return is ordered by the Governor, or, in case of suspension, the period of suspension has elapsed or been determined. As to the Governor's powers in this respect, see Reg. 7, *ib*.

A certificate which has been issued in another State or Colony should be sent to the authority by whom it was granted (Reg. 12, *ib*.) And a certificate issued by the Board of Trade must be sent to that body (s. 470, sub-s. 3, Merchant Shipping Act). But where the holder of such certificate is remaining in the State, and desires that it should not be returned to the Board of Trade, it may be retained for six months or in special cases for a longer period (see Appendix 5, *post*).

Effect of Cancellation, &c., on other Certificates.—Every decision with respect to the cancellation or suspension of a certificate shall, unless otherwise directed, extend equally to all the colonial certificates at the time possessed by the person in respect of whom the decision is made (Reg. 9, Order-in-Council, Appendix 4, *post*).

Grant of Certificate After a Certificate has been Cancelled or Suspended.—The Governor is, in certain circumstances, empowered to return certificates cancelled or suspended, or to shorten the time for which they are suspended, or to issue other certificates in their place (see Reg. 7, Order-in-Council, Appendix 4, *post*).

31. (1) A master, mate, or engineer whose certificate is cancelled or suspended by a Court of Marine Inquiry shall deliver his certificate to the said Court on demand, or, if not so demanded, to the Superintendent, or as the Superintendent directs. Delivery of certificate cancelled or suspended. *Ibid.* s. 14.

(2) If a master, mate, or engineer fails without Penalty. sufficient cause to comply with this section he shall for each offence be liable to a penalty not exceeding fifty pounds.

Recovery of Penalty.—Proceedings for the recovery of this penalty may be taken before any two Justices of the Peace (s. 168).

Section 32

Jurisdiction
of Court in
respect of
detention of
unsafe ships.
Ibid. s. 15.

32. (1) A Court of Marine Inquiry shall hear and determine in open court any appeal or reference in pursuance of this Act in respect of the detention of a ship alleged to be unsafe; and the procedure of that Court on the hearing and determining of such appeal or reference shall be as provided in pursuance of this Act in respect of inquiries as to shipwrecks.

Judge or
assessor may
survey.

(2) Any Judge or assessor of the Court may survey the ship, and shall, for the purposes of this Act, have all the powers of an inspector under this Act.

Presiding
Judge may
appoint a
surveyor.

(3) The presiding Judge of the Court may appoint any competent person or persons to survey the ship and report thereon to the Court.

Powers of
Judge or
other person
making
survey.

(4) Any Judge or assessor of the Court, and any person appointed by the presiding Judge of the Court to survey a ship, may go on board the ship and inspect the same and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, or tackle; and any person who wilfully impedes such Judge, assessor or person in the execution of the survey, or fails to comply with any requisition made by him, shall be liable to a penalty not exceeding ten pounds.

Powers of
Court to
order
detention.

(5) The Court shall have the same power as the Superintendent has to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

Owner, &c.,
may attend
survey.

(6) The owner and master of the ship, and any person appointed by the owner or master, and also any person appointed by the Colonial Treasurer, may attend at any inspection or survey made in pursuance of this section.

Report to
Governor.

(7) The presiding Judge shall send to the Governor such report as may be directed by the rules, and each assessor shall either sign the report, or report to the Governor the reasons for his dissent.

Detention of Unsafe Ships.—See ss. 98 and 106, *post*.

Note to

Load-Line Submerged.—A ship with her load-line submerged is “unsafe” (s. 123). **Section 32**

British Ship.—A British ship is unsafe when by reason of the defective condition of her hull, equipment, or machinery, or by reason of undermanning or overloading, or improper loading or ballasting, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended (s. 98, *post*).

Foreign Ship.—A foreign ship being in any port in this State, may be unsafe by reason of overloading, improper loading or ballasting, or undermanning (s. 106, *post*).

Ship Sold to Foreigner.—Until the British register is closed, a British ship, though sold to a foreigner, is liable to detention for unseaworthiness (*Granjelt v. Lord Advocate*, 1 Ct. of Sess. Cas., 4th Ser., 782).

Transfer of Registry.—When a ship has been detained, she shall not be released by reason of her register being closed or transferred (s. 105, *post*).

Procedure on Appeal or Reference.—See s. 23, and notes thereto, *ante*.

An appeal may be made by the owner or master of a British ship provisionally detained at any time within seven days after service on the master of a copy of the report of the survey of the ship (s. 99, *post*). A notice of appeal must be filed with the registrar as directed by R. 11, *post*.

As to the right of appeal in respect of the detention of a foreign ship, see s. 106, and note thereto, *post*.

Where a ship has been provisionally detained, the Treasurer may at any time, if he thinks it expedient, refer the matter to the Court (s. 100, *post*).

Powers of an Inspector.—Inspectors have the following powers :—

- (a) they may at all reasonable times go on board any ship or vessel, of what description soever to which any of the provisions of this Act extend, for the purpose of examining the hull and machinery, and making any report thereon required by the Superintendent ;
- (b) they may inspect any boats, equipments or materials on board or belonging to any such ship or vessel to which the provisions of this Act extend ;
- (c) they may go on board any such ship or vessel and inspect the same for the purpose of inquiring into or reporting upon the nature and causes of any accident or damage which such ship or vessel has sustained or

**Note to
Section 32**

caused, or is alleged to have sustained or caused (s. 20).

Owner.—Owner includes the manager or secretary of any body corporate or company (s. 3, *ante*).

Master.—Master means every person, except a pilot, having command or charge of a ship (*ib.*)

Release or Detention of Ship.—As to the powers of the Superintendent to order the release or detention of a ship provisionally detained, see s. 98, *post*.

Order of the Court.—As soon as possible after its decision, the Court shall issue an order for the release or detention (either finally or on condition) of the vessel (R. 26, and s. 105, *post*).

Report of Court.—See R. 34, and Form 4, *post*.

Power to detain unsafe ships and procedure for such detention.

Ibid. s. 6.

Act No. 32,
1899, ss. 2,
36 (1).

98. Where a British ship being in any port in New South Wales is, by reason of the defective condition of her hull, equipment, or machinery, or by reason of undermanning or overloading or improper loading or ballasting, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, any such ship (hereinafter referred to as “unsafe”) may be provisionally detained for the purpose of being surveyed, or for ascertaining the sufficiency of the crew, and either finally detained or released, as follows:—

- (a) If the Superintendent has reason to believe on complaint or otherwise that a British ship is unsafe, he may provisionally order the detention of the ship for the purpose of being surveyed, or for ascertaining the sufficiency of the crew, and for the latter purpose may muster the crew.

In ports other than Sydney and Newcastle a police magistrate may, in the absence of the Superintendent, exercise the aforesaid powers.

- (b) When a ship has been provisionally detained, the Superintendent or police magistrate (as the case may be) shall cause to be served forthwith on the master of such ship a written statement

of the grounds of her detention, and the Superintendent may if he thinks fit appoint some competent person to survey the ship and report thereon to him. **Section 98**

- (c) The Superintendent on receiving the said report may either order the ship to be released, or, if in his opinion the ship is unsafe, he may order her to be finally detained either absolutely or until the performance of such conditions with respect to the execution of repairs or alterations or the unloading or reloading of cargo or the proper ballasting of such ship or the manning thereof as he thinks necessary to ensure her safety for sea-going purposes, and may from time to time vary or add to any such order.
- (d) Where a ship has been provisionally detained, the owner or master of the ship at any time before the person appointed under this section to survey the ship makes such survey may require that he shall be accompanied by such certificated marine surveyor as the owner or master selects. In such case if the surveyors agree the Superintendent shall cause the ship to be detained or released accordingly, but if they differ may act as if the requisition had not been made; and the owner and master shall have the like appeal touching the report of the official surveyor as hereinafter provided.
- (e) The Superintendent may at any time if satisfied that a ship detained under this Act is not unsafe order her to be released either with or without conditions.

Load-Line Submerged.—A ship with her load-line submerged is an “unsafe” ship (s. 123.)

British Ship.—As to the definition of “British ship,” see note to s. 27, *ante*.

Note to Section 98 Until the British register is closed a British ship, though sold to a foreigner, is liable to detention for unseaworthiness (*Granfelt v. Lord Advocate*, 1 Ct. of Sess. Cas., 4th Ser., 782).
As to the detention of a foreign ship, see s. 106, *post*.

Appeal or Reference to Court.—See ss. 99, 100, *post*.

Transfer of Registry.—When a ship has been detained she shall not be released by reason of her register being subsequently closed or transferred (s. 105, *post*.)

Appeal to Court of Marine Inquiry. **99.** Before the order for final detention of a ship alleged to be unsafe is made, a copy of the report of the survey of the ship shall be served upon the master of the ship, and, within seven days after that service, the owner or master may appeal to a Court of Marine Inquiry in manner directed by the rules of that Court.

Report of Survey.—See s. 98 (*b*), *ante*.

Owner or Master.—See s. 3, *ante*.

Notice of Appeal—Where the owner or master desires to appeal to the Court, he shall file at the office of the registrar of the Metropolitan Court, or at the office of the registrar of the Court, nearest to the place in which the ship is, notice in the form No. 1 in the Appendix (R. 11, *post*).

Procedure on Appeal.—The procedure on the hearing and determining of the appeal is the same as provided in respect of inquiries as to shipwrecks (s. 32, *ante*). And see s. 23, and note thereto, *ante*, and RR. 21-26, *post*.

Magistrates may be appointed to hear appeals. **100.** (1) The Governor may appoint any stipendiary or police magistrates to sit as Judges of Courts of Marine Inquiry for the purpose of hearing and determining such appeals, and any one or more of the stipendiary or police magistrates so appointed may so sit, and all the provisions of this Act relating to Judges of a Court of Marine Inquiry shall apply to such stipendiary or police magistrates so sitting.

Ibid.

Reference to Court by Treasurer. (2) Where any such ship has been provisionally detained the Treasurer may at any time if he thinks it expedient refer the matter to a Court of Marine Inquiry.

There appears to be no power to appoint magistrates to hear Note to
and determine references under sub-s. 2. Section 100

References—Procedure.—The procedure on the hearing and determining of a reference will be the same as in the case of inquiries (s. 32, *ante*). And see RR. 21-26, *post*.

As to the procedure on inquiries, see s. 23, and note thereto, *ante*.

105. (1) Any officer authorised to act as a detaining officer under this Act shall have, for the purpose of carrying out his duties under this Act, the same powers as an inspector under this Act; and the provisions of this Act with respect to persons who wilfully impede an inspector, or disobey a requisition or order of an inspector, shall apply to persons committing the like offences in respect of detaining officers. Supplemental provisions as to detention of ship.
45 Vic. No. 6, s. 10.

(2) An order for the detention of a ship, provisional or final, or any order varying the same, shall be served as soon as may be on the master of the ship. Service of order.

(3) When a ship has been detained under this Act she shall not be released by reason of her register being subsequently closed or transferred. Transfer of registry.

(4) For the purposes of a survey under this division of this Act any person authorised to make the same may go on board a ship and inspect the same and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, or tackle. Powers of surveyors.

Once a ship has been detained she is not released by reason of her register being closed or transferred (sub-s. 3, *supra*); and a British ship which has been sold to a foreigner is liable to detention for unseaworthiness until the British register is closed (*Grangelt v. Lord Advocate*, 1 Ct. of Sess. Cas., 4th Ser., 782).

Powers of Inspector.—See note to s. 32, *ante*.

106. (1) Where a foreign ship being in any port in New South Wales is unsafe by reason of overloading, improper loading, or ballasting, or undermanning, the provisions of this Act with respect to the detention of ships Application to foreign ships of provisions as to detention.

Section 106 shall apply to such ship as if she were a British ship, but with the following modifications:—

45 Vic. No. 6,
s. 20.

Act No. 32,
1899, ss. 2, 36
(2)

(a) A copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the State to which the ship belongs at or nearest to the place where the ship is detained.

(b) Where the ship has been provisionally detained the consular officer on the request of the owner or master of the ship may require that the person authorised to survey the ship shall be accompanied by such person as the consular officer selects; and in such case if the surveyor and such person agree, the Superintendent shall cause the ship to be detained or released accordingly, but if they differ he may act as if the requisition had not been made, and the owner and master shall have the same right of appeal to the Governor as is hereinbefore provided by this Act with respect to the detention of British ships.

Meaning of
“consular
officer.”

(2) In this section the expression “consular officer” means any consul-general, vice-consul, consular agent, or other officer recognised by the Governor as a consular officer of a Foreign State.

Provisions as to Detention of Ships.—Sec. ss. 98-100, 105, *ante*.

Right of Appeal to Governor.—Sub-s. (1) (b), *supra*, enacts that the owner and master of a foreign ship provisionally detained “shall have the same right of appeal to the Governor as hereinbefore provided by this Act with respect to the detention of British ships,” but nowhere in this Act is any such provision made. In the “Navigation Law Amendment Act of 1881,” however, it was provided that the owner or master of a British ship might appeal to the Governor in Council against the order for final detention (s. 6, sub-s. 4). This last sub-section was, amongst other provisions, repealed by the “Navigation (Amendment) Act, 1899,” and an appeal to the Court of Marine Inquiry, then for the first time established, substituted (see now s. 99, *ante*); but the provisions in the Act of 1881 (s. 20) giving the owner and

master of a foreign ship the same right of appeal to the Governor as thereinbefore provided by that Act with respect to the detention of British ships, was left untouched, and is now re-enacted in s. 106. The omission to amend s. 20 of the Act of 1881 seems to have been an oversight on the part of the draughtsman of the Act of 1899, and appears to have been again overlooked in consolidating the Navigation Acts. Section 106

Until this section has been amended, or judicially interpreted, there must be considerable doubt as to the right of appeal in respect of a foreign ship provisionally detained. It will be noted that sub-s. (1) enacts that the provisions with respect to the detention of ships shall apply to an unsafe foreign ship, as if she were a British ship, but with such modifications as are set out in paragraphs (a) and (b). One of such modifications appearing to be that a right of appeal to the Governor is substituted for the appeal to the Court of Marine Inquiry.

120. In every case of collision between two ships it shall be the duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers (if any), such assistance as is practicable and necessary in order to save them from any danger caused by such collision; and in case he fails to do so and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to be an act of misconduct or a default for which his certificate (if any) may be cancelled or suspended. In case of collision ships to assist each other.
35 Vic. No. 7,
s. 102.

Duty of Standing by and Rendering Assistance.—See note to s. 27, *ante*.

Person in Charge.—These words include a mate when the master is below (*Ex p. Ferguson*, L. R. 6, Q. B., 281), and also, it seems, the pilot. But, it should be remembered, the Court has only jurisdiction to deal with the certificates of masters, mates, and engineers (see s. 27, and note thereto, *ante*).

Failure to Render Assistance.—See note to s. 27, *ante*.

Cancellation or Suspension of Certificates.—See s. 27, and notes thereto, *ante*.

Default.—*Ibid.*

Misconduct.—*Ibid.*

FIRST SCHEDULE.

Section 2.

Reference to Act.	Title or Short Title.	Extent of Repeal.
25 Vic. No. 17...	"Navigable Waters Protection Act of 1862"	The whole
35 Vic. No. 7...	"Navigation Act of 1871"	The whole
36 Vic. No. 30...	"Navigation Act Amendment Act of 1873"	The whole
43 Vic. No. 13...	"Navigation Act Further Amendment Act of 1879"	The whole unrepealed portion
45 Vic. No. 6...	"Navigation Law Amendment Act of 1881"	The whole
46 Vic. No. 8...	"Wharfrage and Tonnage Rates Amendment Act, 1882"	The whole unrepealed portion
60 Vic. No. 36...	"Navigation Acts Amendment Act, 1896"	The whole
Act No. 32, 1899	"Navigation (Amendment) Act, 1899"	The whole
Act No. 54, 1900	"Navigation (Amendment) Act, 1900"	The whole

CHAPTER II.

GENERAL RULES OF COURTS OF MARINE INQUIRY.

1. These Rules may be cited as the "Court of Marine Inquiry Rules, 1900." They shall come into operation on the date of their publication in the Gazette, and shall, so far as practicable, and unless otherwise expressly provided, apply to all matters arising in any pending inquiry, appeal, or reference, and also to all inquiries, appeals, references, or re-hearings instituted on or after that date.

Short Title
and com-
mencement.

These rules are made under s. 26, *ante*, which provides that they shall have the same force and effect as if they had formed a part of the Act, notwithstanding that they may conflict with the provisions of the District Courts Act, 1901, or any Act amending the same.

The rules were published in a supplement to the *Gov. Gaz.*, No. 387, on the 27th April, 1900.

District Courts Act and Rules to Apply.—The provisions of the District Courts Act and rules made thereunder apply to inquiries, appeals, &c., so far as they are applicable, and do not conflict with these rules (see s. 23, *ante*, and R. 39, *post*).

PART I.

INTERPRETATION.

2. "Court" means a Court of Marine Inquiry.

"Registrar" means the officer performing for the time being the duties of the Registrar of a Court of Marine Inquiry.

"Superintendent" means the Superintendent of the Department of Navigation or any other person appointed to perform his duties.

See also R. 1 of the District Court Rules, 1899.

PART II.

Rule 3

APPOINTMENT OF COURT AND NOTICE TO PARTIES.

Registrar to
inform
Judges when
notice of
appeal filed.

3. Immediately upon the filing of a notice of appeal or reference, the Registrar shall communicate the fact, by telegraph and letter, to the Judges of the Court, who shall appoint a time and place for the hearing of the appeal or reference.

Where the notice of appeal or reference is filed with the registrar of any Court other than the Metropolitan Court, the communication referred to in this rule should be sent to the secretary to the District Court Judges.

Notice to
parties.

4. As soon as the Registrar has ascertained when an appeal or reference will be heard, he shall send notice thereof to the Superintendent and to the appellant, or, in the case of a reference, to the owner or master, in the form No. 2 in the Appendix.

Mode of Service.—See R. 37, *post*.

An affidavit of service should always be filed.

Master.—Master means any person, except a pilot, having command or charge of a ship (*s. 3, ante*).

Owner.—Owner shall be taken to include the manager or secretary of any body corporate or company (*ib.*).

Superinten-
dent to give
notice to com-
plainant.

5. If the appeal or reference is in respect of the detention of a ship after a survey made on the complaint of any person, hereinafter called the complainant, the Superintendent shall send to him notice of the time and place appointed for the hearing.

As to service of this notice, see R. 37, *post*.

Notice of
inquiry.

6. When the time and place for holding an inquiry have been fixed by the Court, the Registrar shall cause a notice, to be called a notice of inquiry, to be served upon the Superintendent, and the owner, master, and officers of the ship, as well as upon any person whom the Court may direct to be served with such notice. The notice shall be in the form No. 5 in the Appendix, with such variations as circumstances may require.

As to service of the notice of inquiry, see R. 37, *post*.

Note to
Rule 6

Owner.—See note to R. 4, *ante*.

Effect of Service of Notice of Inquiry.—The effect of service of this notice upon the Superintendent and certificated officers is to place them in the position of parties (R. 7, *post*), and as to service upon other persons, to place them in that position upon their appearing at the inquiry (R. 8, *post*). Irrespective of the officers of the ship, the owner or other persons may appear to have contributed to the casualty by having sent the ship to sea in an unseaworthy condition, or without proper equipment, and in such cases the court would, no doubt, direct such persons to be served with the notice of inquiry.

PART III.

PARTIES.

Inquiries.

7. The Superintendent, and any certificated officer upon whom a notice of inquiry has been served, shall be deemed to be parties to the proceedings; and, unless the Court shall otherwise order, the Superintendent shall be the party having the conduct of the case. Parties to inquiries.

As to the jurisdiction of the Court in inquiries as to shipping casualties, or as to charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, see s. 27, *ante*.

8. Any other person upon whom a notice of inquiry has been served, and any person who shows that he has an interest in the inquiry shall have a right to appear, and any other person may, by leave of the Court, appear; and any person who appears under this rule shall thereupon become a party to the proceedings. Who may appear.

It has been ascertained from the Marine Department of the Board of Trade that under a similar rule in England the ship-owners, and passengers, or the representatives of passengers, are usually allowed to appear, but the active part they are permitted to take is defined by the Court (Appendix 6, *post*).

The appearance signified by this rule is the appearance of the party at the actual hearing. No time is limited or prescribed for such appearance, and in England it has been held that a party may appear at any time.

Rule 9

Parties to
appeals or
references.

Appeals or references.

9. The Superintendent and the appellant, or, in the case of a reference, the owner or master, shall be parties to the proceedings.

As to the jurisdiction of the Court in respect of appeals or references as to the detention of ships alleged to be unsafe, see s. 32, *ante*.

Court may
make any
person a
party.

10. Any other person, on entering an appearance, may, by permission of the Court, be made a party to the proceedings.

There is no provision in the rules as to the manner or time of entering an appearance, but it probably may be done by giving notice to the registrar, prior to the hearing, in some such form as the following :—

In the Court of Marine Inquiry at

In the matter of the appeal in respect of the detention of the "Helen," a ship alleged to be unsafe.

Take notice that I desire to enter an appearance, and become a party to the proceedings on this appeal.

Dated at Sydney this day of , 19 .

(Name in full)

(Address)

PART IV.**NOTICE OF APPEAL.**

Notice of
appeal to be
given

11. Where the owner or master of a ship, hereinafter called the appellant, desires to appeal to the Court in respect of the detention of a ship alleged to be unsafe, he shall file at the office of the Registrar of the Court for the Metropolitan district, or at the office of the Registrar of the Court nearest to the place in which the ship is, a notice in the form No. 1 in the Appendix.

The notice of appeal must be filed within seven days after service of a copy of the report of the survey of the ship alleged to be unsafe has been made upon the master of the ship. See s. 99, *ante*.

The registrar must inform the Judges that a notice of appeal has been filed, as directed by R. 3, *ante*.

Owner or Master.—See note to R. 4, *ante*.

PART V.

EVIDENCE.

Rule 12

12. Either party may give to the other a notice in writing to produce such documents (saving all just exceptions) as relate to any matters in difference, and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice. Notice to produce.

There is seldom much documentary evidence obtainable; the certified extract of the ship's register is usually produced by the superintendent, and the ship's log by the master. But the rule affords a provision which may be useful where it is material to inquire into the construction or seaworthiness of the ship and equipments, and the like matters.

The notice of inquiry (see Form 5, *post*) itself contains a general notice to the party served to produce to the court any documents relevant to the case which may be in his possession; in the case of the master, the ship's log; and in the case of all certificated officers, their certificates of competency

Notice to Produce—Its Form and Effect.—See note Dt. Ct. Pr., pp. 287-288.

Service.—See R. 37, *post*,

13. Either party may give to the other party a notice in writing to admit any document (saving all just exceptions); and in the case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all costs of proving such documents, whatever the result may be, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense. Notice to admit.

As to admission of documents, see note Dt. Ct. Pr., pp. 286-287.

Service.—See R. 37, *post*.

Rule 14**Subpœnas.**

14. Subpœnas shall be according to one of the forms (Forms Nos. 6 and 7) in the Appendix, and may be issued to any party without leave of the Court; and the Court may direct the Registrar to subpœna any person to attend for the purpose of being examined.

Service—See R. 37, *post*.

Compelling Attendance.—The Court of Marine Inquiry has all the powers of the Supreme Court for the purpose of compelling the attendance of witnesses. See s. 27 (5), *ante*.

Tender of Expenses.—Payment or tender of payment to the witness (as required by s. 67, District Courts Act, 1901) should be made at the time when he is served with the subpœna, or at any rate a reasonable time before the hearing (*Fuller v. Prentice*, 2 R.R. 715; and see note Dt. Ct. Pr., p. 285). As to the scale of allowances to witnesses, see Dt. Ct. Pr., pp. 384-385

Attachment of Witnesses.—See R.R. 387-390, District Court Rules, 1899, as to procedure.

Report of
survey to be
produced.

15. On the hearing of an appeal or reference in respect of the detention of a ship, the Superintendent shall produce as evidence all the reports of the survey of the ship.

PART VI.

PROCEEDINGS IN COURT.

Method of
taking down
evidence.

16. The evidence shall be taken down by a shorthand-writer or type-writer, or in such other way as the Court may direct.

The evidence is usually taken down in shorthand, the official shorthand writer being first sworn to correctly record and transcribe it according to the best of his skill and ability.

Inquiries.

Proceedings
on non-
appearance
of any party.

17. At the time and place appointed for holding an inquiry the Court may proceed with the inquiry, whether the parties, upon whom a notice of inquiry has been served, or any of them, are present or not.

As to the jurisdiction of the Court in respect of inquiries, see s. 27, *ante*. Parties may appear by counsel or solicitor, or other person allowed by special leave of the Court (s. 23, *ante*, and s. 31, District Courts Act, 1901).

18. The proceedings on the inquiry shall commence by Rule 18 the Superintendent opening his case and then proceeding with the examination of his witnesses. Each witness, after being examined on behalf of the Superintendent, may be cross-examined by the parties in such order as the Court may direct, and may then be re-examined by the Superintendent. Superintendent to begin.

The Superintendent opens by giving a slight outline of the case. He then puts in a certified copy of the ship's register, and also tenders any charts or maps which may assist the Court.

Ordering Witnesses Out of Court.—In a case of collision between two vessels, it was held by a Wreck Commissioner in England that such of the witnesses of the opposing parties as were certificated officers could not be ordered out of court, on the ground that they were, or might become, parties to the proceedings to whom the rule as to excluding witnesses from the court could not apply (*The Dinorah and Dorunda*, 21 Sol. J. 9). This practice, however, is not followed by the Court of Marine Inquiry, and, where it is admitted that the officers are not to blame for the casualty, they are not allowed to remain, but are ordered out of court with the other witnesses.

There appears to be some doubt as to whether the Court may properly make this order. In the case of *The London Chartered Bank v. Lavers* (1855—1 Legge, 884), the Court (Stephen, C.J., Dickinson and Therry, J.J.) is reported to have held upon the authority of the case of *Cobbett v. Hudson* (22 L. J. Q. B. 11), that a party to a cause, who contemplated giving evidence for himself, had a right to remain in Court for the conduct of his case. It is not clear whether the party was appearing and conducting his case in person. If he did so appear, then the decision really goes no further than that in *Cobbett v. Hudson* (*supra*), where the Court merely held that a Judge *à Nisi Prius* has no authority to prevent a party to a suit addressing the jury as his own advocate, and afterwards giving evidence in support of his own case.

It is said in Taylor on Evidence (10th ed., 1400), "The parties will not usually be included in the order to withdraw, and indeed it is doubtful if they can be; in a modern case (*Outram v. Outram*, 1877 W. N., 75), however, it has been held that the parties may be ordered out of Court during the taking of evidence on the ground that the old rule as to not excluding parties originated when parties were considered incompetent as witnesses. This decision has not been expressly over-ruled; but the invariable practice has been, and is, to allow parties to be present throughout the trial, and it is submitted the decision would not be followed." And see *Charnock v.*

**Note to
Rule 18**

Dewings (1853, 3 C. & K., 378), Talfourd, J.; and *Selfe v. Isaacson* (1858, 1 F. & F., 194), Byles, J.

Questions in the Nature of Cross-examination.—During the examination of witnesses on a formal investigation before a Wreck Commissioner in England, the case being one of collision, certain questions were put by the counsel for the Board of Trade to which objection was made that they were in the nature of a cross-examination, *e.g.*, the third officer of one of the ships was asked as to his statement made on oath on the preliminary inquiry. The Commissioner over-ruled the objection, and, referring to the somewhat analogous procedure in the Prize Court, where the captor produces witnesses from the captured ships, held that the counsel for the Board of Trade, who, at that stage of the inquiry, appeared rather for the general public than for any party, might put questions of an inquisitorial character if necessary and material for eliciting the facts.

The Wreck Commissioner further held that a master might be asked the question to what cause he attributed the casualty even though his certificate was likely to be placed in peril (*The Dinorah* and *Dorunda*, 21 Sol. J., 9).

Order in
which parties
to be heard.

19. When the examination of the witnesses produced by the Superintendent has been concluded, each party to the investigation shall be entitled to produce witnesses, or re-call any of the witnesses who have already been examined for further examination, and generally adduce evidence. The parties shall be heard, and their witnesses examined, cross-examined, and re-examined in such order as the Court shall direct. The Superintendent may also produce and examine further witnesses, who may be cross-examined by the parties and re-examined by the Superintendent.

Parties may
address the
Court.

20. When the whole of the evidence has been concluded, any of the parties who desire so to do may address the Court upon the evidence, and the Superintendent may address the Court in reply upon the whole case.

On the conclusion of the evidence the Court, if it is of opinion that the certificate of the master or any officer should be dealt with, gives its decision as to the cause of the casualty and calls on the party in default to show cause why his certificate should not be suspended or cancelled. Any reasonable adjournment that may be asked for is always granted, as a matter of course, to enable the party to prepare his defence.

The decision of the Court must be delivered by the presiding Judge in open Court (s. 30, *ante*). Note to Rule 20

Appeals or references.

21. At the hearing, the Superintendent shall open his case and then call his witnesses, and having done so, shall state, in writing, what order he requires the Court to make. Superintendent to begin.

As to jurisdiction of the Court in respect of appeals and references, see s. 32, *ante*.

Parties may appear by counsel or solicitor, or other person allowed by special leave of the Court (see note to R. 17, *ante*).

22. The complainant, if he has appeared, shall then call his witnesses, and having done so, shall state, in writing, what order he requires the Court to make. Complainant to follow.

The complainant is the person upon whose complaint the ship has been detained (R. 5, *ante*).

As to entering an appearance, see note to R. 10, *ante*.

23. The appellant, or, in the case of a reference, the master or owner, shall then call his witnesses, and having done so, shall state, in writing, what order he requires the Court to make. Appellant to follow complainant.

24. After the appellant, or, in the case of a reference, the master or owner, has examined all his witnesses, the Superintendent and the complainant may, on cause shown to the satisfaction of the Court, call further witnesses in reply. Superintendent and complainant may call evidence in reply.

25. After all the witnesses have been examined, the Court shall first hear the appellant, or, in the case of a reference, the master or owner, then the complainant (if any), and afterwards the Superintendent. Order in which parties to address.

26. As soon as possible after the Court has come to its decision, the Court shall issue an order for the release or detention (either finally or on condition) of the vessel in the Form No. 3 in the Appendix. Order for release or detention.

The decision of the Court must be delivered by the presiding Judge in open Court (see ss. 30 and 32, *ante*).

A copy of the decision, together with notes of the evidence, must be sent to the Governor (R. 34, *post*).

Rule 27

Adjournment.

Court may
adjourn
hearing.

27. The Court may adjourn the hearing of the inquiry, appeal, or reference from time to time and from place to place; and, where an adjournment is asked for by a party or by the Superintendent, the Court may impose such terms as to payment of costs or otherwise as it may think just as a condition to granting the adjournment.

As to costs, see RR. 32-33, *post*.

PART VII.

RE-HEARING BY ORDER OF THE GOVERNOR.

Judges to fix
time and
place for
re-hearing.

28. Where the Governor directs a re-hearing of any case, the Judges shall fix a time and place for the re-hearing, and the Registrar shall give such reasonable notice to the parties affected by the order for re-hearing as the circumstances of the case may permit.

As to re-hearing at the instance of the Governor, see s. 29, *ante*).

Parties may
be added.

29. The Court may, if it thinks fit, order any other person, other than the parties served with the notice of re-hearing, to be added as a party or parties to the proceedings for the purpose of the re-hearing, on such terms with respect to costs and otherwise as the Court may think fit. Any party to the proceedings may object to the appearance on the re-hearing of any other party as unnecessary.

As to costs, see RR. 32-33, *post*.

Copy of
evidence on
hearing to
be admitted
on re-hearing.

30. The evidence taken at the hearing shall be proved before the Court at the re-hearing by a copy of the notes of the shorthand-writer, or other person authorised by the Court to take down the evidence. For the purpose of this Rule, copies of the notes of the evidence, as well as a copy of the decision given by the Court, shall be supplied to any party to the proceedings, on request, on payment of the usual charge for copying.

31. On the conclusion of the re-hearing the Court shall send to the Governor a copy of the decision, together with notes of any further evidence which may have been given.

Rule 31
Copy of
decision and
notes of
evidence to
be sent to
Governor.

PART VIII.

COSTS.

32. The Court may order the costs and expenses of the inquiry, appeal, reference, or re-hearing, or any part thereof, to be paid by the Superintendent, or by any other party. An order for payment of costs shall be in the Form No. 9 in the Appendix, with such variations as circumstances may require.

Court may
order any
party to pay
costs.

As to the power of the Court to award costs, see s. 23, *ante*, which confers jurisdiction to hear and determine inquiries, &c., according to the terms and provisions of the District Courts Act, 1901, and also s. 105 of that Act, which provides that the costs shall be in the discretion of the Judge, and in default of any special direction by him shall abide the event. The above rule is in conflict with the provisions of s. 105, inasmuch as it appears that under the rule if no order is made there will be no costs. The rule will prevail, as it is provided by s. 26 of the Navigation Act, 1901, that these rules shall have the same force and effect as if they had formed part of that Act, notwithstanding that they may conflict with the provisions of the District Courts Act.

The costs may be recovered in like manner as any judgment debt in the District Court (see s. 23, *ante*, and s. 105, of the District Courts Act, 1901).

As pointed out above, the power to award costs is the same as that possessed by a Judge of a District Court, and, therefore, this rule cannot empower the Judge to give other than the usual party and party costs. This question, and also the subject of ordering a party to pay the Superintendent's costs, were recently considered by the Judges and subsequently the following announcement was made from the bench by His Honour Judge Backhouse:—"With regard to the question whether costs should be allowed to the Superintendent of the Department of Navigation, his Honour said he had asked Judge Murray to call a meeting of the Judges. The meeting was held, and the Judges present were unanimously of opinion that with regard to the costs prior to the inquiry, the payment of assessors' fees, &c., the Court had no power to award these. With respect to the awarding of costs for appearing at the Court, the Judges were of opinion that excepting under very special circumstances no costs should be allowed to the superintendent. The superintendent was not an

**Note to
Rule 32**

ordinary party. He took no side, and appeared really in the interests of the public, and the Judges thought his costs should be paid by the public—that was, that they should come out of the general revenue.”—(*S.M.H.*, 28th Feb., 1906.)

It is believed that, as regards inquiries, the power to award costs against the Superintendent will rarely be exercised by the Court. In one of the first inquiries held under the Act (*The Gleaner*, *S.M.H.*, 20th July, 1900), where the master was held to be in no way to blame, the Court (His Honor Judge Backhouse), in refusing an application for costs against the Superintendent, stated that in the interests of seamen generally, and also the community, it was necessary these inquiries should be held. And in England the Wreck Commissioner expressed his opinion (in the case of *The Vigilant*, 21 Sol. J., 31) that the power to order the Board of Trade to pay costs was only intended to be exercised in a case where there was no foundation for the charge or for any inquiry at all.

**Taxation of
costs.**

33. Where the costs are not assessed by the Court, they shall be taxed by the Registrar on one of the scales provided by the District Court Rules, so far as the same may be applicable; and the Court shall direct on what scale the taxation shall take place.

For scales of costs, see Dt. Ct. Pr., p. 374. The procedure on taxation will be the same as in the District Court.

PART IX.

GENERAL PROVISIONS.

**Court to
report to
Governor.**

34. At the conclusion of the inquiry, or of the hearing of the appeal or reference, the Court shall draw up its decision or report, which shall be in one of the forms (Forms Nos. 4 and 8) in the Appendix, with such variations as circumstances may require; and shall send the report, or a copy of the decision, together with notes of the evidence given, to the Governor.

See ss. 30 and 32 (7), *ante*, as to copy of decision or report to be sent to the Governor.

**Master or
officer may
obtain copy
of decision.**

35. Where the certificate of a master, mate, or engineer has been cancelled or suspended, the Registrar shall, on application by any party to the proceedings, give him a copy of the decision of the Court.

If the decision is accompanied by reasons, the parties are not entitled to a copy of the shorthand writer's notes of those reasons (The *Kestrel*, 6 P. D., 182). Note to Rule 35

36. In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day, and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public fast or thanksgiving, or holiday, in which case the time shall be reckoned exclusive of that day also. Computation of time.

37. Service of any notice, subpoena, summons, or other process, shall be deemed good service if made personally on the person to be served, or if made at his last-known place of abode or business, or if made on board any ship or vessel to which he belongs and accompanied with a statement of the purport thereof to the person being or appearing to be in command or charge of such ship or vessel; and in the case of an owner of a ship, if made on board such ship in manner aforesaid, or at any address he may give for service. Service of process.

This rule has been copied from sub-s. (2), s. 132.

Service on Master.—Where any process under Part VII. of the Act is required to be served on the master of a ship, the same shall be served, where there is no master and the ship is in the jurisdiction, on the managing owner, or, if there is no managing owner, on some agent of the owner residing in New South Wales, or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship. Any such process may be served by delivering a copy thereof personally to the person to be served or by leaving the same at his last place of abode (s. 132).

Obstructing Service on Master.—Any person who obstructs the service of any process on the master of a ship shall incur a penalty not exceeding ten pounds. And if the owner or master is party or privy to such obstruction he shall be guilty of a misdemeanour [*Ib.*, sub-s. (3)].

Time of Service.—There is no time of service prescribed by the rules, but the party or witness should be served a reasonable time, having regard to all the circumstances of the case, before he is required to appear.

Rule 38.

Proof of
service.

38. The service of any notice, subpoena, summons, or other process or document may be proved by the oath or affidavit of the person by whom it was served.

District
Courts Acts
and Rules to
apply.

39. The provisions of the District Courts Act of 1858 (a), and any Act amending the same, and of the District Court Rules made thereunder, shall apply to inquiries, appeals, references, and re-hearings, so far as the same may be applicable, save and except in so far as they may conflict with these Rules.

(a) Now the District Courts Act, 1901.
See ss. 23 and 26, *ante*.

Fees.

40. No fees shall be demanded of any person for filing any document, or for issuing any process of the Court, other than process to enforce an order for the payment of money.

Registrar.

41. For every Court there shall be a Registrar, who shall sign and issue all process of the Court, and have the custody of all records, minutes, and proceedings of the Court.

Registrar of
District
Court to act
as Registrar.

42. The officer of the District Court performing for the time being the duties of Registrar of that Court shall act as Registrar of the Court of Marine Inquiry.

By s. 25, *ante*, all officers of District Courts which have jurisdiction under the Act are officers of Courts of Marine Inquiry, so that the bailiffs of those District Courts which have such jurisdiction as aforesaid are also bailiffs of Courts of Marine Inquiry.

Minute book.

43. The Registrar shall keep a minute-book, according to the form No. 10 in the Appendix, in which he shall enter a minute of the decision or report of the Court as to every inquiry, appeal, reference, or re-hearing.

Seal.

44. For each Court there shall be a seal bearing an impression of the Royal Arms, and having inscribed thereon the words "Court of Marine Inquiry," with the name of the city or town where the Court is held.

All process to
be sealed.

45. The Registrar shall seal with the seal of the Court all process of the Court issued by him.

APPENDIX I.

THE COURT OF MARINE INQUIRY FORMS.

The following forms shall be employed, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the Court shall be of opinion that the deviation was material :—

1.

Notice of Appeal.

Forms.

In the matter of the ship "Commissary."

To the Registrar of the Court of Marine Inquiry

Take notice that I (*name and address*) the master (*or* Rule 11 managing owner *or* owner of shares) of the ship "Commissary" of the port of do appeal from the report of L.M., the surveyor appointed by the Superintendent of the Department of Navigation to survey the said ship (*or as the case may be*).

The address at which all notices and documents may be served on me is

Dated this day of 19
(*To be signed by the Appellant*).

2

Notice of Sitting of Court.

The Court of Marine Inquiry

In the matter of an appeal by A. B. from the report of L. M., Rule 4
the surveyor appointed by the Superintendent of the
Department of Navigation to survey the "Commissary"
(*or as the case may be*).

To A. B., the master (*or* managing owner *or* owner of shares) of the ship "Commissary" the appellant (*or* the Superintendent of the Department of Navigation).

Take notice that the Court of Marine Inquiry will meet at
on the day of 19
at o'clock in the noon to hear the (appeal) in the
above matter.

Dated this day of 19
Registrar of the Court.

3.

Forms.

Order of Court for Release or Detention of Ship.**The Court of Marine Inquiry**

Rule 26

In the matter of an appeal by A. B. from the report of L. M.,
the surveyor appointed by the Superintendent of the
Department of Navigation to survey the "Commissary"
(*or as the case may be*).

The Court (*or I*,) (with the concurrence of
) orders (*or do order*) the said ship to be released
(*or detained*) (finally *or* conditionally upon).
Given under my hand this day of 19 .

Presiding Judge (*or Judge*).

We (*or I*) concur in the above report.

Assessor.

Assessor.

4.

Report of Judge of Court of Marine Inquiry.**The Court of Marine Inquiry**

Rule 34

In the matter of an appeal by A. B. from the report of L. M.,
the surveyor appointed by the Superintendent of the
Department of Navigation to survey the "Commissary"
(*or as the case may be*).

I, , do report that (this Court) having heard this
appeal (I) did with the concurrence of order the
said ship to be released (*or detained*) (finally *or* conditionally
upon).

The Court (*or I*) did also order that the costs of this appeal
be paid by A. B. to the Superintendent of the Department of
Navigation (*or by the Superintendent of the Department of
Navigation to A. B. ; or that all parties shall pay their own
costs*).

Dated this day of 19 .

Judge.

We (*or I*) concur in the above report.

Assessor.

Assessor.

I dissent from the above report, for the following reasons,
viz :—

Assessor.

5.

Notice of Inquiry.

Forms.

The Court of Marine Inquiry

To the Superintendent of the Department of Navigation (or to Rule 6
Master or [or as the case may be] of [or belonging
to] the "Commissary").

I hereby give you notice that the Court of Marine Inquiry
will, on the day of , 19 , at the hour of
o'clock in the noon, at the Court-house, situate at ,
make inquiry into the circumstances attending the shipwreck of
the "Commissary" (or as to the charge of incompetency on the
part of [or as the case may be]).

I have further to give you notice to produce to the Court
(your master's certificate, the log-books of the vessel, and) any
(other) documents relevant to this case which may be in your
possession.

Dated this day of 19 .
Registrar of the Court.

6.

Subpœna to Witness to Give Evidence.

The Court of Marine Inquiry

In the matter of an inquiry as to the shipwreck of the "Com- Rule 14
missary" (or as the case may be).

You are hereby commanded to attend at the Court-house,
at , on the day of 19 , at the hour
of in the noon, to give evidence in the above case
(on behalf of). and thence from day to day until the
said case shall be disposed of.

And at your peril fail not.

Dated this day of 19 .
Registrar of the Court.

To

7.

Subpœna to Witness to Produce Documents.

The Court of Marine Inquiry

In the matter of an inquiry as to the shipwreck of the "Com- Rule 1
missary" (or as the case may be).

Forms.

You are hereby commanded to attend at the Court-house, at _____, on the _____ day of _____, 19____, at the hour of _____ in the _____ noon, to give evidence in the above case (on behalf of _____), and thence from day to day until the said case shall be disposed of; and you are also to bring with you and produce at the time and place aforesaid the several documents hereunder specified (and all other books, papers, writings, and other documents relating to the above case, which may be in your custody, possession, or power).

And at your peril fail not.

Dated this _____ day of _____ 19____.
Registrar of the Court.

To

List of documents required to be produced :—

8.

Decision of the Court.

The Court of Marine Inquiry

Rule 34

In the matter of a formal inquiry held at _____ before _____ (*names of Judges*) assisted by (*names of assessors*) into the circumstances attending the shipwreck of the "Commissary" (*or as the case may be*).

The Court, having carefully inquired into the circumstances attending the above mentioned (shipping casualty), finds that the (*here state the decision of the Court*).

Dated this _____ day of _____ 19____.
Judge (*or Presiding Judge*).

I dissent from the above decision, and my written reasons for so dissenting are annexed hereto.

Judge.

9

Order on a Party for Payment of Costs.

The Court of Marine Inquiry

Rule 32

In the matter of a formal inquiry held at _____, before _____ (*names of judges*) assisted by (*names of assessors*) into the circumstances attending the shipwreck of the "Commissary" (*or as the case may be*).

The Court orders (*or I do order*) that A B do pay to the Forms. Superintendent of the Department of Navigation (*or as the case may be*) (the sum of pounds on account of) the expenses of this (inquiry).

Given under my hand this day of 19 .
Judge (*or Presiding Judge*).

10

Minute-book.

MINUTE of Proceedings in the Court of Marine Inquiry at . Rule 43

No. of case.	Name of Ship.	Names of Parties.	Nature of Inquiry, Appeal, or Reference.	Judgment or Decision of the Court.	Names of Members of the Court and Assessors.	Date of Judgment or Decision.
						19 .

APPENDIX II.

THE REGULATIONS FOR PREVENTING COLLISIONS AT SEA.

HEADNOTE.—The regulations as contained in the Seventh Schedule to the Navigation Act, 1901, were amended by the Governor by proclamations published in the *Gazettes* No. 45, 22nd January, 1904, and No. 262, 28th November, 1906.

These regulations have been re-numbered, and alterations made in Articles 7 (rule 3), 8, and 31 (rule 3), so as to make them uniform with the regulations under the Merchant Shipping Act. Article 9 is left blank.

The alterations are shown by the use of italics.

The Governor may, by proclamation in the *Gazette*, annul or modify any of these regulations, or make new regulations in addition thereto or substitution therefor (s. 113, sub-s. 2).

The Superintendent shall cause the regulations and any alteration therein or addition thereto hereafter to be made to be printed, and shall furnish a copy thereof to any owner or master of a ship who applies for the same (s. 114, sub-s. 1).

Proof of Regulations.—Production of the *Gazette* in which any proclamation containing the regulations or any alteration therein or addition thereto is published, or of a copy of such regulations, alteration, or addition, signed or purporting to be signed by the Superintendent or the Secretary of the Department of Navigation, or any person duly authorised to act for such secretary, shall be sufficient evidence of the due making and purport of such regulations, alteration, or addition (*ib.*, sub-s. 2).

Owners and Masters Bound to Obey Regulations.—All owners and masters of ships shall be bound to take notice of all the regulations, and shall so long as the same continue in force be bound to obey them, and to carry and exhibit no other lights and to use no other fog-signals than such as are required by the regulations.

In case of wilful default the master or the owner of the ship, if it appears that he was in fault, shall for each occasion upon which any regulation is infringed be liable to a penalty not exceeding fifty pounds in addition to his liability for any damages that may have been occasioned by such default (s. 115).

Breaches of Regulations to Imply wilful Default of Person in Charge.—In case any damage to person or property arises from the non-observance by any ship of any of the regulations, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it be shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary (s. 116).

If Collision Ensues from Breach of Regulations Ship to be Deemed in Fault.—If in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any of the regulations, the ship by which such regulation has been infringed shall be deemed to be in fault unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary (s. 117).

Aids to Memory.—The following aids to memorising some of the more important steering and sailing rules are by the late Thomas Gray, C.B.

Two Steam-ships meeting.

When both side lights you see ahead—
Port your helm and show your RED.

Two Steam-ships passing.

GREEN to GREEN—or, RED to RED—
Perfectly safe—Go ahead !

Two Steam-ships crossing.

Note.—This is the position of greatest danger : there is nothing for it but good look-out, caution, and judgment.

If to your starboard RED appear,
It is your duty to keep clear ;
To act as judgment says is proper :—
To Port—or Starboard—Back—or Stop her.

But when upon your Port is seen
A Steamer's Starboard Light of GREEN
There's not so much for you to do,
For GREEN to Port keeps clear of you.

All Ships must keep a good look-out, and Steam-ships must stop and go astern, if necessary.

Both in safety and in doubt
Always keep a good look-out :
In danger, with no room to turn,
Ease her, stop her, go astern.

For the cases decided on the regulations, see Moore's Rules of the Road at Sea, 3rd edit., and Marsden on Collisions, 3rd edit.

PRELIMINARY.

These Rules shall be followed by all vessels upon the high seas and in all waters connected therewith, navigable by sea-going vessels.

In the following Rules every steam-vessel which is under sail and not under steam is to be considered a sailing-vessel, and every vessel under steam, whether under sail or not, is to be considered a steam-vessel.

The word "steam-vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these Rules, when she is not at anchor, or made fast to the shore or aground.

RULES CONCERNING LIGHTS, &c.

The word "visible" in these Rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere.

Article 1. The Rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited.

Article 2. A steam-vessel when under way shall carry—

- (a) On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than forty feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, viz., from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.
- (b) On the starboard side, a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.
- (c) On the port side, a red light, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.
- (d) The said green and red side-lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.
- (e) A steam-vessel when under way may carry an additional white light similar in construction to the light mentioned in sub-division (a). These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.

Art. 3. A steam-vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than six feet apart, and when towing more than one vessel shall carry an additional bright white light six feet above or below such lights, if the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds six hundred feet.

Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in Article 2 (a), except the additional light, which may be carried at a height of not less than fourteen feet above the hull.

Such steam-vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam.

Art. 4 (a) A vessel which from any accident is not under command, shall carry at the same height as the white light mentioned in Article 2 (a), where they can best be seen, and, if a steam vessel, in lieu of that light, two red lights in a vertical line one over the other, not less than six feet apart, and of such a character as to be visible all round the horizon at a distance of at least two miles; and shall by day carry in a vertical line one over the other, not less than six feet apart, where they can best be seen, two black balls or shapes, each two feet in diameter.

(b) A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in Article 2 (a), and, if a steam-vessel, in lieu of that light, three lights in a vertical line one over the other, not less than six feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon, at a distance of at least two miles. By day she shall carry in a vertical line one over the other, not less than six feet apart, where they can best be seen, three shapes not less than two feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white.

(c) The vessels referred to in this Article, when not making way through the water, shall not carry the side-lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this Article are to be taken by other vessels as signals that the vessel showing them is not under command and cannot therefore get out of the way.

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in Article 31.

Art. 5. A sailing-vessel under way, and any vessel being towed, shall carry the same lights as are prescribed by Article 2 for a steam-vessel under way, with the exception of the white lights mentioned therein, which they shall never carry.

Art. 6. Whenever, as in the case of small vessels under way during bad weather, the green and red side-lights cannot be fixed, these lights shall be kept at hand lighted and ready for use; and shall on the approach of or to other vessels, be

exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Art. 7. Steam-vessels of less than forty, and vessels under oars or sails of less than twenty tons gross tonnage, respectively, and rowing boats, when under way, shall not be obliged to carry the lights mentioned in Article 2 (*a*) (*b*) and (*c*), but if they do not carry them they shall be provided with the following lights:—

1. Steam-vessels of less than forty tons shall carry:—

(*a*) In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than nine feet, a bright white light constructed and fixed as prescribed in Article 2 (*a*), and of such a character as to be visible at a distance of at least two miles.

(*b*) Green and red side-lights constructed and fixed as prescribed in Article 2 (*b*) and (*c*), and of such a character as to be visible at a distance of at least one mile, or a combined lantern showing a green light and a red light from right ahead to two points abaft the beam on their respective sides. Such lanterns shall be carried not less than three feet below the white light.

2. Small steamboats, such as are carried by sea-going vessels, may carry the white light at a less height than nine feet above the gunwale, but it shall be carried above the combined lantern mentioned in sub-division 1 (*b*).

3. Vessels under oars or sails, of less than twenty tons, shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

4. Rowing boats, whether under oars or sails, shall have ready at hand a lantern showing a white light, which shall be temporarily exhibited in sufficient time to prevent collision.

The vessels referred to in this Article shall not be obliged to carry the lights prescribed by Article 4 (*a*) and Article 11, last paragraph.

[*Note.*—Boats propelled by oars in the Port of Sydney are governed by a regulation of the Sydney Harbour Trust Commissioners, see Reg. 57, Appendix 3, *post*.]

Art. 8. Pilot vessels, when engaged on their station on pilotage duty, shall not show the lights required for other vessels, but shall carry a white light at the masthead, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

On the near approach of or to other vessels they shall have their side-lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side.

A pilot-vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board, may show the white light instead of carrying it at the masthead, and may, instead of the coloured lights abovementioned, have at hand ready for use a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

Pilot vessels, when not engaged on their station on pilotage duty, shall carry lights similar to those of other vessels of their tonnage.

Steam pilot vessels when engaged on their stations on pilotage duty and not at anchor shall, in addition to the lights required for all pilot boats, carry at a distance of eight feet below their white masthead light a red light visible all round the horizon, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and also the coloured side-lights required to be carried by vessels when under way.

When engaged on their station on pilotage duty and at anchor, they shall carry, in addition to the lights required for all pilot boats, the red light abovementioned, but not the coloured side-lights.

When not engaged on their station on pilotage duty they shall carry the same lights as other steam vessels.

Art. 9. (*In the English Regulations Art. 9 relates to open boats and fishing vessels.*)

Art. 10. A vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light.

The white light required to be shown by this Article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of twelve points of the compass, viz., for six points from right aft on each side of the vessel, so as to be visible at a distance of at least one mile. Such light shall be carried as nearly as practicable on the same level as the side-lights.

Art. 11. A vessel under one hundred and fifty feet in length, when at anchor, shall carry forward where it can best be seen, but at a height not exceeding twenty feet above the hull, a white

light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least one mile.

A vessel of one hundred and fifty feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than twenty, and not exceeding forty feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry

A vessel aground in or near a fairway shall carry the above light or lights and the two red lights prescribed by Article 4 (a).

Art. 12. Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these Rules required to carry, show a flare-up light or use any detonating signal that cannot be mistaken for a distress signal.

Art. 13. Nothing in these Rules shall interfere with the operation of any Special Rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by shipowners, which have been authorised by their respective Governments and duly registered and published.

Art. 14. A steam-vessel proceeding under sail only, but having her funnel up, shall carry in daytime, forward, where it can best be seen, one black ball or shape two feet in diameter.

SOUND-SIGNALS FOR FOG, &c.

Art. 15. All signals prescribed by this Article for vessels under way shall be given :

1. By "steam-vessels" on the whistle or siren.
2. By "sailing-vessels and vessels towed" on the fog-horn.

The words "prolonged blast" used in this Article shall mean a blast of from four to six seconds duration.

A steam-vessel shall be provided with an efficient whistle or siren, sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog-horn, to be sounded by mechanical means, and also with an efficient bell * A sailing-vessel of twenty tons gross tonnage or upwards, shall be provided with a similar fog-horn and bell.

* In all cases where the Rules require a bell to be used, a drum may be substituted on board Turkish vessels, or a gong where such articles are used on board small sea-going vessels.

In fog, mist, falling snow, or heavy rain storms, whether by day or night, the signals described in this Article shall be used as follows, viz. :—

- (a) A steam-vessel having way upon her, shall sound, at intervals of not more than two minutes, a prolonged blast.
- (b) A steam-vessel under way, but stopped and having no way upon her, shall sound at intervals of not more than two minutes, two prolonged blasts, with an interval of about one second between them.
- (c) A sailing-vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.
- (d) A vessel, when at anchor, shall, at intervals of not more than one minute, ring a bell rapidly for about five seconds.
- (e) A vessel, when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command, or unable to manœuvre as required by these Rules, shall, instead of the signals prescribed in subdivisions (a) and (c) of this Article, at intervals of not more than two minutes, sound three blasts in succession, viz. : one prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.

Sailing-vessels and boats of less than twenty tons gross tonnage shall not be obliged to give the abovementioned signals, but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

SPEED OF SHIPS TO BE MODERATE IN FOG, &c.

Art. 16. Every vessel shall, in a fog, mist, falling snow, or heavy rain storms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam-vessel hearing, apparently forward of her beam, the fog-signal of a vessel, the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.

STEERING AND SAILING RULES.

PRELIMINARY—RISK OF COLLISION.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an

approaching vessel. If the bearing does not appreciably change such risk should be deemed to exist.

Art. 17. When two sailing-vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz. :—

- (a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled
- (b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.
- (c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.
- (d) When both are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.
- (e) A vessel which has the wind aft shall keep out of the way of the other vessel.

Art. 18. When two steam-vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This Article only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are, when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each vessel is in such a position as to see both the side-lights of the other.

It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Art. 19. When two steam-vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

Art. 20. When a steam-vessel and a sailing-vessel are proceeding in such directions as to involve risk of collision, the steam-vessel shall keep out of the way of the sailing-vessel.

Art. 21. Where by any of these Rules one of two vessels is to keep out of the way, the other shall keep her course and speed.

Note—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert such collision. (See Articles 27 and 29.)

Art. 22. Every vessel which is directed by these Rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other.

Art. 23. Every steam-vessel which is directed by these Rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

Art. 24. Notwithstanding anything contained in these Rules, every vessel overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, *i.e.*, in such a position with reference to the vessel which she is overtaking that at night she would be unable to see either of that vessel's sidelights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these Rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally passed and clear.

As by day the overtaking vessel cannot always know with certainty whether she is forward of or abaft this direction from the other vessel, she should, if in doubt, assume that she is an overtaking vessel and keep out of the way.

Art. 25. In narrow channels every steam-vessel shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such vessel.

Art. 26. Sailing-vessels under way shall keep out of the way of sailing-vessels or boats fishing with nets, or lines, or trawls. This Rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fair-way used by vessels other than fishing-vessels or boats.

Art. 27. In obeying and construing these Rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above Rules necessary in order to avoid immediate danger.

SOUND SIGNALS FOR VESSELS IN SIGHT OF ONE ANOTHER.

Art. 28. The words "short blast" used in this Article shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam-vessel under way, in taking any course authorised or required by these Rules, shall indicate that course by the following signals on her whistle or siren, viz. :—

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going full speed astern."

NO VESSEL UNDER ANY CIRCUMSTANCES TO NEGLECT PROPER PRECAUTIONS.

Art. 29. Nothing in these Rules shall exonerate any vessel, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

RESERVATION OF RULES FOR HARBOURS AND INLAND NAVIGATION.

Art. 30. Nothing in these Rules shall interfere with the operation of a Special Rule duly made by local authority, relative to the navigation of any harbour, river, or inland waters.

DISTRESS SIGNALS.

Art. 31. When a vessel is in distress and requires assistance from other vessels or from the shore, the following shall be the signals to be used or displayed by her, either together or separately, viz. :—

In the daytime—

1. A gun or other explosive signal fired at intervals of about a minute.
2. The International Code signal of distress indicated by N.C.
3. The distant signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball.
4. A continuous sounding with any fog-signal apparatus.

At night—

- 1 A gun or other explosive signal fired at intervals of about a minute.
2. Flames on the vessel (as from a burning tar-barrel, oil-barrel, &c.).
3. Rockets or shells, throwing stars of any colour or description, fired one at a time *at short intervals*.
- 4 A continuous sounding with any fog-signal apparatus.

APPENDIX III.

REGULATIONS FOR THE MANAGEMENT
OF THE PORT OF SYDNEY.

The following regulations have been made under s. 80 of the Sydney Harbour Trust Act, 1900. They were published in the Government Gazette, No. 157, 9th May, 1906. Those regulations which will not be material to proceedings in the Court of Marine Inquiry have been omitted.

PORT REGULATIONS.

53. The following shall be the signals in use in the Port :—
Explosives on board—Flag B at the foremast head.

Pilot exemption—Square white flag and numerical flags of
Port Jackson code of signals denoting port from
which arrived.

Custom boat—Jack at peak.

Quarantine—Q at foremast head.

Cholera, Yellow Fever, or Plague—International code L.

Harbour Pilot—International code S at foremast head.

Sea Pilot—Jack at foremast head.

Medical assistance—International code H at peak.

Water Police—International code YN at mainmast head.

Want steam tug—International code YP at mainmast head.
Want water boat—International code GUJ at mainmast
head.

Boarding Officer—Numerical flags of Port Jackson code of
signals denoting port from which arrived, or inter-
national code signal.

54. The master and the owner of every vessel shall severally be responsible for the due performance and observance of such of the Regulations of this Part as apply to such vessel ; and when any vessel is under the direction of a Pilot, the said Pilot shall be responsible for the due performance and observance of the Regulations ; but the responsibility of the Pilot shall in no wise relieve the master and the owner of the vessel of their responsibility.

NAVIGATION.

55. All vessels entering the Port shall unshot their guns before they come inside the Inner South Head Reef ; and no gun shall be fired from any merchant ship or vessel within the Port except in a *bona-fide* case of distress.

56. Every vessel, other than ferry boats, navigating that portion of the Port between the Pyrmont Bridge and a line drawn north and south through Fort Denison, including Sydney Cove, shall proceed at a speed not exceeding six (6) knots an hour.

57. *This regulation has been repealed, and the following regulation stands in lieu thereof (see Government Gazette, No. 226, 19th September, 1906):—*

206. Every rowing boat propelled by oars or sail, and navigating at night within the port, shall be provided with a white light in a globular lantern, which shall be temporarily exhibited in sufficient time to prevent collision.

This is Art. 7, r. 4, of the Regulations for Preventing Collisions at Sea (p. 52 *ante*), with the exception that by this regulation the light must be in a globular lantern.

58. The speed of any steamer navigating the Port shall be reduced while passing any works of the Commissioners in progress, or any dredge or other vessels employed in the execution of such works, so that such works or dredge, or other vessel shall not be interrupted or damaged.

59. Tow ropes with a scope of more than one hundred and fifty (150) feet shall not be used between a steam tug and the vessel such steam tug is towing while westward of Fort Denison; and when practicable the tug shall be fastened alongside the vessel which such tug is removing.

60. All single-ended ferry steamers, launches, and other steamers which ply within the Port berthing at a jetty at Circular Quay, shall swing at the jetty and leave their berth end on, and shall not back out stern first and turn in the Cove while under weigh.

61. *This regulation has been repealed and the following regulation stands in lieu thereof (see Government Gazette, No. 221, 5th September, 1906):—*

202. Ferry boats shall not berth at Circular Quay, except when engaged in the present daily services to Vaucluse, Manly, Mosman, Neutral Bay, Milson's Point, Lavender Bay, McMahon's Point, and the Parramatta and Lane Cove Rivers. The penalty for a breach of this regulation shall be a sum not exceeding £100.

62. *This regulation has been repealed and the two following regulations have been made in lieu thereof (see Government Gazette, No. 198, 25th July, 1906):—*

197. Colliers shall not be navigated in Sydney Cove between the hours of 8 a.m. and 9.30 a.m., 12.45 p.m. and 2.15 p.m., 4.30 p.m. and 6 p.m., except on Saturdays, when the midday hours shall be between 12 (noon) and 1.30 p.m.

198. Oversea vessels, coasting craft, tugs, lighters, and hulks shall not navigate in Sydney Cove between the hours of 8 a.m. and 9.30 a.m., and the hours of 4.30 p.m. and 6 p.m., and on Saturdays between the hours of 12 (noon) and 1.30 p.m.: Provided that this Regulation shall not prevent vessels of the Peninsular and Oriental Steamship Company and the Orient-Pacific Line of Royal Mail Steamers from leaving the wharves in the occupation of these Companies between the hours of 12 (noon) and 1.30 p.m. on Saturdays.

The two following regulations were published in Government Gazette, No. 184, 27th June, 1906 :—

194. Steam lighters or tugs shall not enter or leave Sydney Cove with lighters or punts in tow astern, but such lighters or punts shall be lashed alongside the towing vessel.

195. Every vessel entering Sydney Cove shall be navigated on that side of the Cove on which it is intended to berth, and every vessel leaving Sydney Cove shall be navigated on that side of the Cove on which the vessel has been berthed. Vessels in Sydney Cove, excepting tugs when engaged in towing vessels to or from a wharf, shall not cross the line of ferry traffic.

63. *This regulation has been repealed and the following regulation stands in lieu thereof (see Government Gazette, No. 268, 5th December, 1906) :—*

208. Vessels proceeding to a wharf or intending to lie alongside a vessel berthed at a wharf in Sydney Cove shall approach the berth on a north and south line, and shall, as far as possible, maintain such north and south direction until the vessel is actually berthed. Vessels intending to lie with head to northward at such wharf or alongside a vessel berthed thereat shall swing in the fairway north of a line between Fort Macquarie and Dawes Point and tow to the berth stern first.

64. Vessels leaving a wharf or berth alongside a vessel lying at a wharf in Sydney Cove at which they have been moored head to southward shall tow out stern first on a line as nearly as possible north and south, and swing in the fairway north of a line between Fort Macquarie and Dawes Point: Provided that so much of this Regulation as relates to swinging in the fairway shall not apply to any vessel berthing at the jetty running east and west on the western side of Sydney Cove, or at the berth immediately south of it under lease to Messrs. Gibbs, Bright, and Company.

65. A steam whistle, or bell, or fog-horn shall not be sounded on any vessel navigating the waters of the Port for the purpose of summoning or signalling to workmen or passengers, or to any person whatsoever, but shall only be sounded for such purposes as relate to navigation.

66. Only vessels bound in or out of the Port, ferry steamers, other steamers plying with passengers, and pleasure craft shall navigate the Port on Sundays without the permission in writing of the Harbour Master.

67. Any vessel which has fire or fires on board shall not approach or remain dangerously close to any wharf or place in the Port at which explosives are being loaded or discharged.

68. A vessel shall not anchor near any of the following positions :—

- (a) A line between Potts' Point and the south end of Garden Island.

- (b) A line between Bradley's Head and Fort Denison.
- (c) A line between Fort Denison and Fort Macquarie.
- (d) A line between Milson's Point and the north-west portion of Dawes' Point.
- (e) A line drawn between the north-west portion of Dawes' Point and Blue's Point.
- (f) A line between Miller's Point and the south-east of Goat Island.
- (g) Within 250 feet of Pyrmont Bridge.
- (h) A line between Simmon's Point and the south-west end of Goat Island.
- (i) A line between White Horse Point and Fitzroy Dock.
- (k) The entrance to Five Dock Bay ; and
- (l) The entrance to the Lane Cove River, Greenwich.
- (m) Any part of the Port in which a cable, telephone wire, or water-pipe is laid.

189. A vessel shall not be anchored south of a line drawn between Dawes' and Miller's Points, or within six hundred (600) feet of any wharf or jetty, or in such position as shall obstruct the approaches thereto.

This regulation was published in Government Gazette, No. 177, of 13th June, 1906.

69. If any vessel be sunk or stranded within the Port, or if any obstruction be found to impede the navigation and use of the Port or any part thereof, the master or the owner or agent of such vessel, or the owner of the property by which such obstruction is caused, shall immediately notify the Harbour Master of the position of such obstruction, and shall exhibit on or near such vessel or obstruction such flags, masts, or lights as the Harbour Master may direct.

70. Rafts of timber shall not lie in the fairway. Rafts lying in the Port shall, between sunset and sunrise, exhibit a proper light on a pole twelve (12) feet high fitted properly on one end or part of such raft. In any case in which the raft is over one hundred (100) feet in length, lights of the description above mentioned must be fitted and exhibited on each end thereof.

[*72. Every vessel in the Port shall, from sunset to sunrise, carry the regulation lights, as provided by the "Merchant Shipping Act."]

[*73. Upon every vessel at anchor within the Port there shall, from sunset to sunrise, be exhibited, where it can best be seen, a bright white light in a globular lantern eight (8) inches in diameter.]

* Section of Act ; printed here for information.

74. Every vessel when backing out from any wharf shall between sunset and sunrise, show at the stern, as nearly as practicable on the same level as the side-lights, a bright fixed light.

BERTHING OF VESSELS.

82. The master or person having the charge or command of any vessel coming to or lying alongside any wharf or vessel berthed at a wharf shall, both before and during such time as such vessel is moored or stationed at such wharf or vessel berthed at a wharf, have the anchors stowed, the jib-boom in, the lower yards topped and braced sharp up, and all other projections stowed within the rail of the said vessel, provided that the Harbour Master give directions that this be done.

83. In order to facilitate the removal of vessels from their berths at any wharf or place of mooring, or for other reasons, the Harbour Master may require the cables, hawsers, or other fastenings of any ship to be slacked down, or hove in, her yards topped or braced fore and aft, and her martingale and jib-boom to be rigged in.

86. All small boats or launches alongside of vessels of wharves shall give way to Government boats and to the boats of the Commissioners on duty.

87. *This regulation has been repealed, and Regulation 196 made in lieu thereof (see Government Gazette, No. 198, 25th July, 1906):—*

196. Not more than two (2) vessels shall lie abreast at any wharves in Sydney Cove: Provided that during coaling operations two (2) colliers of a maximum aggregate beam of sixty-one feet (61) may lie one inside and the other outside of a vessel berthed at the wharves now tenanted by the Peninsular and Oriental, Messageries Maritimes, Orient-Pacific, and Norddeutscher Lloyd Companies.

88. Any lighter or punt lying, between the hours of sunset and sunrise, outside any steamer moored in Sydney Cove shall, during those hours, exhibit a bright light on the side farthest from the steamer at the widest part of such lighter or punt.

VESSELS IN PORT.

90. Every vessel lying alongside a wharf, or vessel lying alongside a vessel berthed at a wharf, shall, from sunset until sunrise, be provided with proper lights and be provided continuously with such appliances in the way of gangways and man-ropes as may, in the opinion of the Harbour Master, be necessary for the convenience and safety of persons passing to and from such vessels: Provided that nothing in this Regulation, shall override the provisions of Regulation No. 94.

91. Every vessel lying at a wharf shall have such a safety-net suspended from a stage or other appliance that may be rigged for the purpose of facilitating ingress and egress to the said vessel

as will, in the opinion of the Harbour Master, prevent persons falling into the water in the event of their slipping off the said stage or other appliance that may be rigged for the aforesaid purpose.

93. All openings in the ship's side shall be closed at sundown, and all cargo skids shall be unrigged at sundown, except during such time as they are actually in use, when they shall be brightly illuminated.

94. Every gangway fixed for the purpose of giving the crew access to the ship after dark shall be brightly illuminated by the best available means as long as such gangway is in communication with the shore, and a watch shall be continually set upon the said gangway.

95. A steam whistle shall not be blown from any steamer while lying alongside a wharf in the Port.

BOAT RACES.

124. Only the umpire's boat and two steamers plying for hire, authorised by the Commissioners, shall follow any boat race on the Parramatta River. The two steamers plying for hire will be allotted positions on the port and starboard sides, respectively, of the umpire's boat, and during the progress of any race the stem of a hired steamer shall not be in advance of the stern of the umpire's boat.

125. The steering wheel of every steamer following any such race shall, unless such vessel be fitted with a pilot bridge, be so raised that the master of the said steamer shall be in a position to see over the heads of the passengers.

126. A clear mid channel track, not less than 300 feet, shall be preserved along the entire length of the course of any such race, and it shall be unlawful for any vessel to remain or go upon any part of such track after such time of the day on which the race is held as is notified by the Commissioners in a daily newspaper published in Sydney on the morning of such day, until the race has passed such part of the track.

127. A steamer returning from any such race shall not be driven at a speed exceeding six (6) knots an hour until such steamer shall have passed under or through Gladesville Road Bridge

128. The master of any vessel who navigates or conducts, or causes to be navigated or conducted, such vessel in contravention of any of the Regulations Nos. 124 to 128 inclusive, shall be liable to a penalty of not exceeding ten pounds (£10).

PYRMONT AND GLEBE ISLAND BRIDGES.

168. The Pyrmont Bridge, the dimensions of which will be found in Schedule N, shall be opened for the passage of vessels at any time on any day of the week, including Sunday, excepting be-

tween the hours of 5.30 a.m. and 6 a.m., 8 a.m. and 9 a.m., 12 (noon) and 12.15 p.m., 12.45 p.m. and 1.15 p.m., 1.45 p.m. and 2 p.m., and 4 p.m. and 5 p.m. : Provided that the bridge shall be closed during such time as may be occupied in effecting necessary alterations and repairs.

169. The Glebe Island Bridge, the dimensions of which will be found in Schedule N, shall be opened for the passage of vessels at any time on any day of the week, including Sunday, excepting between the hours of 5 30 a.m. and 6 a.m., 8 a.m. and 9 a.m., 12 (noon) and 12.15 p.m., 12.45 p.m. and 1.15 p.m., 1.45 p.m. and 2 p.m., and 4 p.m. and 5 p.m. : Provided that the bridge shall be closed during such time as may be occupied in effecting necessary alterations and repairs.

170. When the master of a vessel requires either of the bridges to be opened, the men in charge of the particular bridge shall be signalled by means of a steam whistle ; and when the bridge is opened so as to permit of the passage of the vessel, a signal to effect such passage shall be given by the hoisting of a red flag over the controlling-house in the centre of the swing between sunrise and sunset, and by the exhibition of a red light between sunset and sunrise, and until such signal be given the vessel shall not approach within one hundred (100) yards of the bridge.

171. Vessels passing through the bridges, or either of them, shall steam through, or be towed through by a tug.

172. Vessels passing from the northern to the southern side of either of the bridges shall pass through the western openings thereof ; vessels passing from the southern to the northern side of either bridge shall pass through the eastern openings thereof.

173. The master of a vessel which it is desired to take through either of the bridges shall first brace all yards fore and aft, and, should the beam of the vessel exceed thirty feet, top lower yards before the passage be made.

174. Vessels or floating timber shall not be made fast to either of the bridges, nor to any part thereof.

Schedule N.

SYDNEY HARBOUR TRUST.

PYRMONT BRIDGE.

The clear opening through each swing span is seventy (70) feet. The minimum clear opening through the side spans is seventy-three (73) feet nine (9) inches.

The clear headway above high-water Spring tides under the side spans is twenty-four (24) feet six (6) inches ; under the swing span, twenty (20) feet nine (9) inches.

The height from high-water Spring tides to top of hand-rail is forty-one (41) feet.

GLEBE ISLAND BRIDGE.

The clear opening through each swing span is sixty (60) feet.

The clear headway above ordinary high-water Spring tides under the swing span varies from fifteen (15) feet nine (9) inches alongside the protecting platform to eighteen (18) feet six (6) inches immediately below the arc lamp near the centre of each fairway ; under the side spans the clear headway is twenty (20) feet.

The height from ordinary high-water Spring tides to the top of the hand-rail is thirty-three (33) feet nine (9) inches.

APPENDIX IV.

ORDER IN COUNCIL

WITH RESPECT TO THE USE, ISSUE, DELIVERY,
CANCELLATION, AND SUSPENSION OF COLONIAL
CERTIFICATES OF COMPETENCY.

AT THE COURT AT WINDSOR, THE 9TH DAY OF MAY, 1891.

Present :

The Queen's Most Excellent Majesty.

Lord President.

Lord Steward.

Earl of Coventry.

WHEREAS by the Merchant Shipping (Colonial) Act, 1869, it is (amongst other things) enacted that where the Legislature of any British possession provides for the examination of, and grant of certificates of competency to, persons intending to act as masters, mates, or engineers on board British ships, and the Board of Trade reports to Her Majesty that they are satisfied that the examinations are so conducted as to be equally efficient as the examinations for the same purpose in the United Kingdom under the Acts relating to merchant shipping, and that the certificates are granted on such principles as to show the like qualification and competency as those granted under the said Acts, and are liable to be forfeited for the like reasons and in the like manner, it shall be lawful for Her Majesty, by Order in Council :—

- (1) To declare that the said certificates shall be of the same force as if they had been granted under the said Acts.
- (2) To declare that all or any of the provisions of the said Acts which relate to certificates of competency granted under those Acts shall apply to the certificates referred to in the said Order.
- (3) To impose such conditions and to make such regulations with respect to the said certificates, and to the use, issue, delivery, cancellation, and suspension thereof, as to Her Majesty may seem fit, and to impose penalties not exceeding Fifty pounds for the breach of such conditions and regulations.

And that upon the publication in the London Gazette of any such Order in Council as last aforesaid, the provisions therein contained shall, from a date to be mentioned for the purpose in

such Order, take effect as if they had been contained in the Act, and that it shall be lawful for Her Majesty in Council to revoke any Order made as aforesaid.

And whereas by the Merchant Shipping Act, 1876, it is provided that Her Majesty may, by Order in Council, revoke, alter, or add to any Order in Council made by Her under the Merchant Shipping Acts.

And whereas by the Order in Council of the 19th day of August, 1899, Her Majesty was pleased to declare that, subject to certain exceptions, conditions, and regulations therein contained or set out in the schedule thereto, the colonial certificates granted as follows, viz. :—

- (1) On and after the 19th day of August, 1871, by the Minister of Marine and Fisheries in Canada, to persons intending to act as masters or mates on board British ships ;
- (2) On and after the 12th day of May, 1874, by the head of the Government of the Possession of Malta and its Dependencies, to persons intending to act as masters, mates, or engineers on board British ships, that is to say—To masters of the first-class or masters of a foreign-going ship, to mates of the first-class or first mate of a foreign-going ship, to mates of the second class or second mate of a foreign going ship, to engineers of the first class or first class engineers, and to engineers of the second class or second class engineers ;
- (3) On and after the 4th day of January, 1870, by the Steam Navigation Board of Victoria, to persons intending to act as masters, mates, or engineers of British sea going steam-ships ;
- (4) On and after the 1st day of May, 1872, by the Governor for the time being of the Possession of New Zealand, to persons intending to act as masters, mates, or engineers on board British ships ;
- (5) On and after the 18th day of June, 1872, by the Marine Board of the Possession of New South Wales, to persons intending to act as masters, first mates, or second mates, or as first class engineers or as second class engineers on board British ships ;
- (6) On and after the 12th day of May, 1874, by the Marine Board of the Possession of South Australia, to persons intending to act as masters, first mates, only mates, or second mates, or first class engineers, or second class engineers on board British ships ;

- (7) On and after the 1st day of April, 1876, by the Governor of the Possession of Tasmania, to persons intending to act as masters, mates, or engineers on board British ships ;
- (8) On and after the 27th day of June, 1876, by the Lieutenant-Governor of the Possession of Bengal, to persons intending to act as masters, mates, or engineers on board British ships ;
- (9) On and after the 14th day of May, 1877, by the Governor of the Possession of Newfoundland, to persons intending to act as masters or mates on board British ships ;
- (10) On and after the 11th day of July, 1877, by the Governor of the Possession of Bombay, to persons intending to act as masters, mates, or engineers on board British ships ;
- (11) On and after the 1st day of October, 1877, by the Marine Board of the Possession of Queensland, to persons intending to act as masters, mates, or engineers on board British ships ;
- (12) On and after the 1st day of January, 1884, by the Governor of the Possession of Hong Kong, to persons intending to act as masters, mates, or engineers on board British ships ;
- (13) On and after the 1st day of January, 1887, by the Minister of Marine and Fisheries in the Possession of Canada, to persons intending to act as first class engineers or second class engineers of sea-going British ships ;
- (14) On and after the 1st day of August, 1888, by the Governor of the Possession of the Straits Settlements, to persons intending to act as first class engineers and second class engineers of sea-going British ships :

And whereas by the Order in Council of the 1st day of May, 1890, Her Majesty was pleased to declare that, subject to certain exceptions, conditions, and regulations therein contained or set out in the schedule thereto, the colonial certificates granted—

- (15) On and after the 1st day of June, 1890, by the Governor of the Possession of the Straits Settlements, to persons intending to act as masters, first mates, and second mates of sea-going British ships ;

And whereas by the Order in Council of the 22nd day of November, 1890, Her Majesty was pleased to declare that, subject to certain exceptions, conditions, and regulations therein contained or set out in the schedule thereto, the colonial certificates granted—

- (16) On and after the first day of January, 1891, by the Governor of the Possession of Mauritius, to persons intending to act as masters, first mates, and second mates of sea-going British ships ;

should be of the same force as if they had been granted under the said Acts, and subject to the conditions and regulations imposed and made by the Board of Trade, and set out in the schedules to the said recited Orders in Council respectively.

And whereas it has been made to appear to Her Majesty that it is expedient that the conditions and regulations set out in the said recited Orders in Council and the schedules thereto should be rescinded and the said recited Orders in Council revoked, and a new Order in Council containing such modified and amended conditions and regulations substituted in lieu thereof.

Now therefore Her Majesty, by and with the advice and consent of Her Privy Council, is hereby pleased :—

- (1) To declare that the Colonial Certificates of Competency granted—

- (a) By the Minister of Marine and Fisheries in Canada, from and after the 19th day of August, 1871, to persons intending to act as masters or mates on board British ships, and from and after the first day of January, 1887, to persons intending to act as first class engineers or second class engineers of sea going British ships ;
- (b) By the Head of the Government of the Possession of Malta and its Dependencies, from and after the 12th day of May, 1874, to persons intending to act as masters, mates, or engineers on board British ships, that is to say—To masters of the first class or masters of a foreign-going ship, to mates of the first class or first mate of a foreign-going ship, to mates of the second class or second mate of a foreign-going ship, to engineers of the first class or first class engineers, and to engineers of the second class or second class engineers ;
- (c) By the Steam Navigation Board of Victoria, appointed by the Government of the Possession of Victoria, from and after the 4th day of January, 1870, to persons intending to act as masters, mates, or engineers of British sea-going ships ;

- (d) By the Governor for the time being of the Possession of New Zealand, from and after the 1st day of May, 1872, to persons intending to act as masters, mates, or engineers on board British ships ;
- (e) By the Marine Board of the Possession of New South Wales, from and after the 18th day of June, 1872, to persons intending to act as masters, first mates, or second mates, or as first class engineers or as second class engineers on board British ships ;
- (f) By the Marine Board of the Possession of South Australia, from and after the 12th day of May, 1874, to persons intending to act as masters, first mates, only mates, or second mates, or first class engineers or second class engineers on board British ships ;
- (g) By the Governor of the Possession of Tasmania, from and after the 1st day of April, 1876, to persons intending to act as masters, mates, or engineers on board British ships ;
- (h) By the Lieutenant-Governor of the Possession of Bengal, from and after the 27th day of June, 1876, to persons intending to act as masters, mates, or engineers on board British ships ;
- (i) By the Governor of the Possession of Newfoundland, from and after the 14th day of May, 1877, to persons intending to act as masters or mates on board British ships ;
- (k) By the Governor of the Possession of Bombay, from and after the 11th day of July, 1877, to persons intending to act as masters, mates, or engineers on board British ships ;
- (l) By the Marine Board of the Possession of Queensland, from and after the 1st day of October, 1877, to persons intending to act as masters, mates, or engineers on board British ships ;
- (m) By the Governor of the Possession of Hong Kong, from and after the 1st day of January, 1884, to persons intending to act as masters, mates, or engineers on board British ships ;

- (n) By the Governor of the Possession of the Straits Settlements, from and after the 1st day of August, 1888, to persons intending to act as first class engineers and second class engineers of sea-going British ships ;
- (o) By the Governor of the Possession of the Straits Settlements, from and after the 1st day of June, 1890, to persons intending to act as masters, first mates, and second mates of sea-going British ships ;
- (p) By the Governor of the Possession of Mauritius, from and after the 1st day of January, 1891, to persons intending to act as masters, first mates, and second mates of sea-going British ships ;

shall be of the same force as if they had been granted under the said Acts.

- (2) To declare that all the provisions of the said Acts which relate to certificates of competency for the foreign trade granted under those Acts, except—

So much of the third sub-section of the 23rd section of the Merchant Shipping Act Amendment Act, 1862, as requires, at the conclusion of a case relating to the cancelling or suspending of a certificate, such certificate, if cancelled or suspended, to be forwarded to the Board of Trade ; and the whole of the provisions of the fourth sub-section of the same section,

shall apply to such Colonial Certificates of Competency as are in paragraph 1 of this order referred to : provided, however, that in the case of New Zealand, the foregoing exceptions shall not interfere with or suspend the operation of an Act of the Legislature of New Zealand, intituled The Merchant Shipping Act Adoption Act 1869 (32 & 33 Vict. No. 5) : And provided that section 139 of the Merchant Shipping Act, 1854, and section 10 of the Merchant Shipping Act Amendment Act, 1862, shall, for the purpose of their application to such certificates of competency as aforesaid, be construed as not referring to the Board of Trade, but as referring to the authority mentioned in the interpretation clause of Schedule A to this order, which granted the certificate which has been lost or is to be replaced.

- (3) To impose and make the regulations set out in the Schedule A hereto, numbered 1 to 12 respectively, with respect to the said Colonial Certificates of Com-

petency, and to the use, issue, delivery, cancellation, and suspension thereof, and to impose for the breach of such regulations the penalties therein mentioned.

- (4) To revoke the conditions and regulations set out in the schedules to the said recited Orders in Council, and to substitute therefor the regulations set out in the Schedule A hereto, numbered 1 to 12 respectively, and to declare that, from and after the time when this order takes effect, the regulations set out in the Schedule A hereto shall apply to all colonial certificates that may heretofore have been or shall be hereafter granted as aforesaid.
- (5) To declare that this order shall take effect in the said possessions respectively which are enumerated in the Schedule B hereto, immediately from and after the publication of this order in such possessions respectively, and that all certificates granted in the said possessions subsequently to the dates named in the Schedule B and before this order comes into force, shall have the same effect, and be of the same value, and confer the same privileges on the holders thereof, as if granted after this present order.
- (6) To direct that the said hereinbefore recited Orders in Council shall be revoked in each of the said possessions on the day on which this order takes effect therein as provided in the preceding paragraph (5) hereof: provided, however, that the revocation of the said Orders in Council shall not affect or invalidate any Colonial Certificate of Competency previously granted to which the said Orders in Council apply, or affect the validity or invalidity of anything done under the said Orders in Council before this order takes effect or any obligation heretofore incurred.
- (7) A copy of this order shall forthwith, after the publication thereof in the *London Gazette*, be forwarded to the Governor, Lieutenant-Governor, Administrator, or Head of the Government of each of the said enumerated possessions, who shall, immediately upon the receipt of such copy, publish this order, and the Secretary of State for the Colonies and the Secretary of State for India in Council are hereby required to take order in that behalf.

C. L. PEEL.

(NOTE.—This order appears to have been published for the first time in this State in the Government Gazette of the 30th May, 1902.)

SCHEDULE A.

Regulations with respect to the use, issue, delivery, cancellation, and suspension of Colonial Certificates of Competency.

Interpretation Clause.

In the construction and for the purposes of these regulations, the following terms shall have the respective meanings herein-after assigned to them, that is to say—

“*Colonial Certificate of Competency*” “*Colonial Certificate*” shall mean a certificate of competency granted under the authority of the Legislature or legislative authority of one of the British possessions in Schedule B hereto mentioned, to persons intending to act or acting as masters, mates, or engineers of British ships.

“*Authority*” shall mean the Governor, Lieutenant-Governor, Administrator, Head of the Government, Minister, Board, body, or corporation of or in any British possession for the time being authorised by the Legislature or legislative authority of such possession to grant Colonial Certificates of Competency.

“*Certificate*” shall mean a certificate of competency.

REGULATIONS.

Form of Certificate.

1. A Colonial Certificate of Competency shall be on parchment, and as nearly as possible similar in shape and form to the corresponding certificate of competency for the foreign trade granted by the Board of Trade under the Acts relating to merchant shipping.

Name of Possession to be inserted.

2. A Colonial Certificate of Competency shall have the name of the British possession in which the same is granted inserted prominently on its face and back.

Certificates to be numbered consecutively.

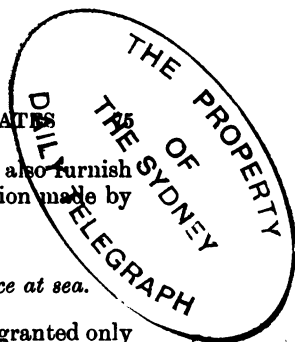
3. The Colonial Certificates of Competency granted in each British possession shall be numbered in consecutive order.

Lists of Certificates granted, cancelled, &c., to be sent to Registrar-General of Seamen.

4. The authority in each British possession shall furnish the Registrar-General of Seamen in London, from time to time, with accurate lists of all such Colonial Certificates of Competency as may be granted therein, or as may for any cause whatsoever be

ORDER IN COUNCIL—COLONIAL CERTIFICATES

cancelled, suspended, renewed, or re-issued ; and shall also furnish him with duplicates of the applications for examination made by the persons to whom such certificates are granted.



Certificates to be granted only upon proof of service at sea.

5. A Colonial Certificate of Competency shall be granted only upon proof that the previous service at sea of the person applying for the same has been such as is required by the regulations for the time being in force in the United Kingdom with respect to certificates of the like grade.

Certificates of Competency granted contrary to this regulation, or upon any false, incorrect, or insufficient proof, certificate, or report of service, qualification, conduct, or character, shall be regarded as improperly granted.

Certificates not to be granted when former are cancelled.

6. A Colonial Certificate of Competency shall not be granted to any person who may have had a certificate, whether granted by the Board of Trade or by the authority of a British possession, cancelled or suspended under the provisions of the said Acts or of any Act or ordinance for the time being in force in any part of Her Majesty's dominions, unless—

- (i.) in accordance with Regulation No. 7 ;
- (ii.) or the same is a certificate of a lower grade than the one so cancelled or suspended, and is issued upon the recommendation of the court or authority which cancelled or suspended the original certificate ;
- (iii.) or the period of suspension has expired ;
- (iv.) or intimation has been received from the Board of Trade, or the authority by whom the cancelled or suspended certificate was originally granted, to the effect that no objection to the grant of such colonial certificate is known to exist.

Before a certificate is returned in accordance with subsection (iii.) any certificate which may have been granted temporarily or pending the suspension must be delivered up, and it shall be returned to the authority by whom it was granted.

Colonial Certificates of Competency granted contrary to this regulation shall be regarded as improperly granted.

Certificates which may be granted after a Certificate has been cancelled or suspended.

7. (1) It shall be lawful for the Governor or person administering the Government of the British possession in which a certificate has been cancelled or suspended if, after full investigation of all the circumstances, he thinks the justice of the case requires it:—

- (a) If the certificate was granted in the colony, to return the certificate which has been cancelled or suspended, or to shorten the time for which it is suspended, or to grant or request the authority of the possession to grant a certificate of the same or any lower grade in place of the certificate which has been cancelled or suspended.
- (b) If the cancelled or suspended certificate was granted by the authority of another colony, to request such authority to return the certificate which has been cancelled or suspended, or to shorten the time for which it is suspended, or to grant a certificate of the same or any lower grade in place of the certificate which has been cancelled or suspended.
- (c) If in the opinion of such Governor or person administering the Government of the British possession the justice of the case requires the issue of a colonial certificate without delay to the person whose certificate has been cancelled or suspended, the Governor or person administering the Government aforesaid (in addition to acting upon sub-section (b) of this regulation) to issue, or request the authority in such British possession to issue, a certificate of the same or any lower grade in place of the certificate which has been cancelled or suspended, which substituted certificate is to be in force for such limited period as such Governor or person administering as aforesaid shall in that behalf direct and no longer.
- (d) If the cancelled or suspended certificate was granted by the Board of Trade, to issue, or request the authority of the possession to issue, a colonial certificate of the same or any lower grade in place of the cancelled or suspended certificate, and such substituted certificate is to be in force for such limited period as such Governor or person administering as aforesaid shall in that behalf direct and no longer; and the Governor or person aforesaid shall also cause the Board of Trade to be informed of his act.

(2) If a colonial certificate is cancelled or suspended in the United Kingdom, the Board of Trade may, if in their opinion the justice of the case requires it, return or request the authority by whom such certificate was granted to return any certificate which has been cancelled or suspended, or shorten or request such authority to shorten the time for which it was suspended, or request such authority to issue a certificate of the same or any lower grade in place of the certificate which has been cancelled or suspended.

(3) Whenever the authority by whom a cancelled or suspended certificate was originally issued is requested by the Governor or person administering the Government of a British possession in accordance with section (1) of this regulation, or by the Board of Trade, in accordance with section (2) of this regulation, to return any certificate which has been cancelled or suspended, or to shorten the time for which it is suspended, or to issue a certificate of the same or any lower grade in place of any certificate which has been so cancelled or suspended, the authority so requested as aforesaid shall forthwith return any certificate which has been cancelled or suspended, or shorten the time for which it was suspended, or issue a certificate accordingly (as the case may be).

(4) In all cases in which the powers given by this regulation are exercised, a report of the case shall be sent by the Governor or person administering the possession in which the powers are exercised to the authority by whom the cancelled or suspended certificate was granted.

Certificates improperly granted may be cancelled without formal investigation.

(8) A Colonial Certificate of Competency which appears from information subsequently acquired, or otherwise, to have been improperly granted, may (without any formal investigation under The Merchant Shipping Act, 1854, or the Acts amending the same) be cancelled by the authority by which the same was granted, or by the Board of Trade in the United Kingdom, and the holder of such certificate shall thereupon deliver it to the Board of Trade or such authority, or as they or either of them may direct, and in default thereof shall incur a penalty not exceeding Fifty Pounds, which shall be recoverable in the manner in which penalties imposed by the Acts relating to merchant shipping are thereby made recoverable, or in such other summary proceedings as the law of any British possession where the holder may be allow or permit to be brought for the recovery thereof.

Cancellation, &c., of a Certificate shall involve cancellation of all the other Certificates possessed by its Owner.

9. Every decision with respect to the cancellation or suspension of a certificate pronounced by any board, court, or tribunal under the provisions of the said Acts shall, unless otherwise directed, extend equally to all the colonial certificates at the time possessed by the person in respect of whom the decision is made

Certificates believed to be fraudulent may be demanded.

10. Any officer of the Board of Trade, or the Registrar General of Seamen, or any of his officers, or a superintendent of a mercantile marine office, or a consular officer, or duly appointed shipping officer in a British possession, may demand the delivery to him of any Colonial Certificate of Competency which he has reason to believe has been improperly issued, or is forged, altered, cancelled, or suspended, or to which the person using it is not justly entitled, and may detain such certificate for a reasonable period for the purpose of making inquiries respecting such issue, forgery, alteration, cancellation, suspension, or possession; and any person who, without reasonable cause, neglects or refuses to comply with such demand shall incur a penalty not exceeding Twenty Pounds or its equivalent in local currency, which shall be recoverable in the manner in which penalties imposed by the Acts relating to merchant shipping are thereby made recoverable, or in such other summary proceedings as the law of any British possession where such person may be may allow or permit to be brought for the recovery thereof.

Suspended Certificates to be re-issued only by Colony by which originally granted.

11. Subject to these regulations, a Colonial Certificate of Competency which has, from any cause, been cancelled or suspended, shall be renewed or re-issued only by the authority by which the same was originally granted.

Colonial Certificates, when cancelled or suspended, to be sent to the authority which granted them.

12. Whenever a Colonial Certificate is cancelled or suspended the board, court, or tribunal cancelling or suspending the same shall send to the authority by whom the certificate was granted a full report upon the case, together with a copy of the evidence taken therein, and also the certificate which has been cancelled or suspended.

SCHEDULE B.

Possession.	Nature of Certificate.	Date.
Canada	Masters and Mates...	19th August, 1871
„	First Class Engineers and Second Class Engineers ..	1st January, 1887
Malta and its Depen- dencies	Masters, Mates, and Engi- neers.	12th May, 1874
Victoria... ..	Masters, Mates, and Engi- neers.	4th January, 1870
New Zealand	Masters, Mates, and Engi- neers.	1st May, 1872
New South Wales ..	Masters, First Mates, or Second Mates; and First Class Engineers or Second Class Engineers.	18th June, 1872
South Australia ...	Masters, First Mates, Only Mates, or Second Mates; and First Class Engineers or Second Class Engineers	12th May, 1874
Tasmania	Masters, Mates, and Engi- neers	1st April, 1876
Bengal	Masters, Mates, and Engi- neers.	27th June, 1876
Newfoundland	Masters and Mates	14th May, 1877
Bombay... ..	Masters, Mates, and Engi- neers.	11th July, 1877
Queensland	Masters, Mates, and Engi- neers.	1st October, 1877
Hong Kong	Masters, Mates, and Engi- neers.	1st January, 1884
Straits Settlements ...	First Class Engineers and Second Class Engineers.	1st August, 1888
„ „	Masters, First Mates, and Second Mates.	1st June, 1890
Mauritius	Masters, First Mates, and Second Mates.	1st January, 1891

INSTRUCTIONS TO OFFICERS IN BRITISH POSSESSIONS ABROAD.

Merchant Shipping (Colonial) Act, 1869.

Consecutive Office Number, 422A.

Departmental, 1169.

Colonial, 29.

Board of Trade (Marine Department)

Revised February, 1893.

THE annexed Order in Council, dated the 9th day of May, 1891, revokes all Orders previously issued relating to Colonial Certificates of Competency, and further amends and consolidates all the regulations now in force relating to their use, issue, delivery, cancellation, and suspension.

As the Colonial Certificates of Competency referred to in the said Order in Council are to have the same force as the similar certificates granted by the Board of Trade in the United Kingdom, such a colonial certificate must be accepted as occupying in every respect the place of one of the latter, and as entitling its bona fide holder to act in the capacity stated in it, or any inferior (but not a superior) capacity in any British ship, all over the world without the possession of a Board of Trade Certificate.

Colonial certificates will have to be used, produced, and delivered at the times and on the occasions at and on which certificates of competency granted by the Board of Trade would have to be used, produced, and delivered.

When it appears from a certificate officially produced to the officer that its owner possesses other certificates, their production also should be required, and if they are not produced their owner's explanation, in writing, should be demanded and forwarded to the Registrar-General of Seamen with the least possible delay.

Officers in British possessions abroad are empowered by Regulation 10 attached to the Order in Council to demand, and if necessary detain, any such colonial certificate which they have reason to believe has been improperly issued, or has been forged, altered, cancelled, suspended, or to which the person using it is not justly entitled.

Whenever this power is exercised a report of the facts and circumstances must be sent by the officer, with the least possible delay, to either the Board of Trade or the Government of the possession in which the certificate was originally granted or may purport to have been granted, accordingly as communication may be easier and quicker

As the withdrawal of a certificate would in some cases entail inconvenience, not only upon its possessor, but also upon the owners of the ship and cargo, it is scarcely necessary to caution officers that the exercise of this power should only be resorted to when the evidence is perfectly clear; and if the ship is bound to the United Kingdom, and the report abovementioned has been sent to the Government of the possession by which the certificate was originally granted, the Board of Trade should nevertheless be informed of the facts.

Every case of death of a colonial certificate-holder which may come to the officer's knowledge should be reported without delay to the Government of the possession by which the certificate was granted.

The attention of officers and functionaries in British possessions abroad engaged in the conduct of official inquiries in wreck and discipline cases is directed to the fact that the certificates to which the Order in Council applies will be liable to cancellation and suspension in precisely the same way as certificates granted by the Board of Trade under the Merchant Shipping Acts and by the same boards, courts, and tribunals. The provisions of The Merchant Shipping Act, 1854, and The Merchant Shipping Act Amendment Act, 1862, as to Courts of Inquiry will therefore be applicable to the colonial certificates in question, with the exception of the provisions specified in the Order in Council.

Attention is further directed to the provision inserted in Regulation 7 attached to the Order in Council, under which the Governor or person administering the Government of the British possession in which a certificate has been cancelled or suspended is, in certain circumstances, empowered to return certificates cancelled or suspended by an official Court of Inquiry, or to shorten the time for which they are suspended, or to issue other certificates in their place.

It will be noticed that Regulation 9 attached to the Order in Council provides that the cancellation or suspension of a certificate shall involve cancellation or suspension of all the other certificates (if any) possessed by its owner. With the view of carrying this regulation strictly into effect, it will be desirable that the Court should endeavour to ascertain and should specify in their decision the particulars of all the certificates possessed by any person whose conduct is the subject of an investigation by them.

In cases of cancellation or suspension of such colonial certificates, copies of the report of the Court and of the evidence, together with the respective certificates, should be sent to the Governments of the British possessions by whom the several certificates possessed by the offender were originally granted.

A full report upon the case and the evidence should, at the same time, be sent to the Board of Trade, as required by the Act, and the sentence, giving the number of each certificate dealt with and the possession in which it was granted, should be mentioned in it.

When a certificate has been cancelled or suspended in a British possession, and the Governor of that possession does not see fit to interfere with the decision of the Court, the officer whose certificate has been so dealt with, if he wishes to appeal, should be referred to the Government of the British possession which granted the certificate, and not to the Board of Trade.

These instructions must be understood as having reference only to the certificate referred to in the said Order in Council.

COURTENAY BOYLE,
Acting Secretary.

GEORGE J. SWANSTON,
Assistant Secretary.

APPENDIX V.

RECOMMENDATIONS FROM THE BOARD OF
TRADEAS TO THE DISPOSAL OF CANCELLED AND
SUSPENDED CERTIFICATES.

Downing-street, 5th January, 1880.

SIR,—I have the honour to transmit to you a copy of a letter from the Board of Trade, recommending that in certain cases certificates suspended under the Merchant Shipping Acts in the Colonies should, instead of being forwarded to the Board of Trade, be retained by the Colonial Governments, in order to insure their immediate return at the expiration of the period of suspension.

I request that, should you have no objections to offer to the course proposed by the Board of Trade, you will cause the necessary arrangements to be made for its adoption in the colony under your Government.—I have, etc.,

M. E. HICKS BEACH.

The Officer Administering the
Government of New South Wales.

Board of Trade (Marine Department), Whitehall Gardens, S.W.,
2nd December, 1879.

INQUIRIES, CERTIFICATES.

SIR,—I am directed by the Board of Trade to state that their attention has been drawn to the expediency of making arrangements so as to ensure the return of certificates which are suspended abroad at the expiration of the sentence.

By the provisions of section 23, sub-section 3, of the Merchant Shipping Amendment Act, 1862, it is required that certificates which have been suspended or cancelled shall be forwarded to the Board of Trade with the report of the Board, Court, or Tribunal who have inquired into the case.

It has happened, however, in some cases, where the suspension has been only for a short period, and the owner of the certificate has not returned to the United Kingdom, that the return of the certificate has, in consequence of its having been sent to the Board of Trade, been delayed beyond the period of suspension. The Board of Trade are of opinion, therefore, that, when an inquiry is held in any of Her Majesty's Colonies or British possessions abroad, and an officer whose certificate is suspended for a period not exceeding three months proposes to remain in the colony, his

certificate may properly in such a case be retained by the Colonial Government, in order that it may be returned to him as soon as the sentence expires. In such cases the report sent to the Board of Trade should carefully explain how the certificate has been disposed of.

The Board of Trade would suggest, for the consideration of Sir Michael Hicks Beach, that their opinion should be communicated to the Colonial Governments, and that they should be invited to make arrangements for acting as proposed in the cases of inquiries held within their several jurisdictions.—I have, etc.,

(Signed) THOMAS GRAY.

The Under-Secretary of State,
Colonial Office.

Downing-street, 2nd July, 1880.

SIR,—With reference to my predecessor's Circular Despatch of the 5th of January last, relative to the detention in the colonies, in certain cases, of certificates suspended under the Merchants Shipping Acts, I have the honour to transmit to you, for your information, extracts from a correspondence with the Board of Trade, from which you will perceive that the time during which certificates suspended in the colony under your Government may be retained, may, in the opinion of the Board of Trade, be extended to six months.—I have, etc.,

KIMBERLEY.

The Officer Administering the
Government of New South Wales.

Extract of letter from the Board of Trade to the Colonial Office, dated 2nd April, 1880, M.5060:—

"The Board of Trade see no objection to the term for which certificates may be retained in the Colony being extended to six months in the case of those colonies to which, on account of their distance from the United Kingdom, it would be impossible for the Board of Trade to return them within that period.

"The Court will not, of course, retain certificates except with the knowledge and consent of the Officers interested, for whose benefit only this departure from the strict letter of the law is sanctioned."

Extract of a letter from the Colonial Office to the Board of Trade, dated 24th May, 1880:—

"I am to request to be informed whether the Board of Trade wishes Supplementary Circular to be issued modifying in accordance with your letter above referred to, or otherwise, the terms

of your letter of the 2nd December, 1879, appended to Sir Michael Hicks Beach's Circular Despatch of the 5th of January last, and if so, to what Colonies it should be sent."

Extract of a letter from the Board of Trade to the Colonial Office, dated the 3rd June, 1880, M.10043 :—

"With regard to your inquiry whether the Board of Trade wishes Supplementary Circular to be issued, modifying, in accordance with their letter of the 2nd April, or otherwise, the terms of their letter of the 2nd December, 1879, I am to state that the Board see no objection to the extension of the term of three months to six months in the case of the colonies named in the margin, and they will be glad to know whether Lord Kimberley is of the opinion that the name of any other colonies should be added to this list."

The Australian Colonies,
Tasmania,
New Zealand,
Fiji,
Hong Kong,
Straits Settlements,
Ceylon.

Marine Department, 7 Whitehall Gardens,

London, S.W., 18th May, 1903.

SIR,—I am directed by the Board of Trade to forward to you, in compliance with the request contained in your letter (No. 38/552) of the 13th March last, copies of the circular despatches to Governors of Colonies, dated 5th January and 2nd July, 1880, respecting the retention by Colonial Governments of certificates suspended by Colonial Courts of Marine Inquiry.

The Board have further considered the matter, and they desire me to state that when the holder of a certificate which has been cancelled or suspended is remaining in the colony, the certificate may in special cases, at the discretion of the Government of the colony, be retained for a longer period than six months.

If the certificate which is suspended has been granted by the Government of the Colony in which the inquiry has been held, it will, of course, be retained in the Colony unless the holder wishes otherwise.

I am to add that in all cases where a certificate granted by the Board of Trade is retained for any period by a Colonial Authority, it is desired that the report of the inquiry, or the letter forwarding the report sent to this Department, should contain a statement as to the disposal of the certificate.—I am, etc.,

WALTER J. HOWELL.

The Secretary,

Department of Navigation, Sydney.

APPENDIX VI.

APPEARANCE BY PERSONS OTHER THAN PARTIES TO THE INQUIRY (PRACTICE IN ENGLAND)

Board of Trade (Marine Department), 7 Whitehall Gardens,
London, S.W.,

13th February, 1901.

SIR,—I am directed by the Board of Trade to acknowledge the receipt of your letter of the 17th ultimo, forwarding a copy of the rules adopted by the Court of Marine Inquiry recently established in New South Wales, and requesting an opinion on certain points connected with section 5 of the general rules for Formal Investigations into Shipping Casualties, 1895.

1. In reply, the Board desire me to state that the persons usually allowed to appear at Formal Investigations other than the parties to it, *i.e.*, those upon whom notices have been served, are those persons who can show that they have an interest in the inquiry.

For instance, though it is sometimes not necessary to summon the owner of a vessel which is the subject of wreck inquiry, he obviously has an interest in the inquiry and has therefore the right to appear. Again, any witness whose conduct is, or may become, one of the subjects of the inquiry, although he is not made a party to it, would be considered to have an interest in, and would be allowed to appear at the inquiry.

In a case of loss of life from a ship, the representative of the relatives of a deceased person is allowed to appear, but the part he takes in the inquiry is controlled by the Magistrate hearing it. The Magistrate would in such a case guard against any attempt to use the inquiry as a means of obtaining material for a civil action and also against waste of time going into matters outside the scope of the inquiry.

2. The Courts in this country have always conceded the right of passengers injured either in person or in property to appear at an inquiry, but the active part they are allowed to take in it is defined by the Court.

3. As far as can be ascertained the words "any person who shows that he has an interest in the investigation shall have a right to appear" have never been judicially interpreted and up to the present no difficulty has arisen in dealing with the question of fact raised in each individual case.

I am, etc.

WALTER J. HOWELL.

The Secretary, Department of Navigation, Sydney.

APPENDIX VII.

RULES WITH REGARD TO THE APPOINTMENT AND SUMMONING OF ASSESSORS.

The Treasury, New South Wales,
6th June, 1900.

“NAVIGATION (AMENDMENT) ACT, 1899.”

The following Rules having been made by His Excellency the Governor, with the advice of the Executive Council, under the “Navigation (Amendment) Act, 1899,” are published in accordance with the provisions of that Act.

WILLIAM JOHN LYNE.

RULES UNDER THE “NAVIGATION (AMENDMENT) ACT, 1899.”

Rules to come into force.

1. These Rules shall come into force on the date when the same shall be published in the *Government Gazette*.

The Rules were published in a Supplement to the *Gov. Gaz.* (No. 557) on 6th June, 1900. For authority under which they are made, see s. 18, *ante*.

Qualifications of Assessors.

2. Persons placed on the List of Assessors, who assist in a Court of Marine Inquiry, under the Navigation (Amendment) Act, 1899, shall be classified according to their qualifications as follows :—

Qualifications—Classes.

Class I.—Mercantile Marine Masters.

- (a) Five years service as a master in the merchant service, of which two years must have been service in command of a sailing ship with a certificate of competency.
- (b) Five years service as a master in the merchant service, of which two years must have been service in command of a steamship with a certificate of competency.

Class II.—Mercantile Marine Engineers.

Five years service as an engineer in the merchant service, and at the time of appointment holding a first-class certificate of competency as an engineer.

Appointment of Assessors.

3. Subject to these Rules assessors for investigations into shipping casualties shall be appointed from the list of assessors

by the Colonial Treasurer, and, so far as in his opinion circumstances permit, shall be taken in order of rotation from each class or sub-class abovementioned.

4. If any investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master, mate, or engineer, there shall be appointed from the list of assessors not less than two assessors from Class I. and Class II., or from either of those classes.

5. Subject to any special appointment or appointments which the Colonial Treasurer may think it expedient to make in any case where special circumstances appear to him to require a departure from these Rules (the requirements of the last preceding Rule being always complied with), assessors shall be appointed as follows :—

- (1) Where the investigation involves, or appears likely to involve, the cancelling or suspension of a certificate of a master or mate, but not of an engineer, at least two assessors shall be appointed from Class I.
- (2) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master or mate of a sailing ship, one at least of the assessors shall be appointed from subsection (a) of Class I, and where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a master or mate of a steamship, one at least of the assessors shall be appointed from subsection (b) of Class I.
- (3) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of an engineer, one at least of the assessors shall be appointed from Class II.

6. The Superintendent shall inform the Colonial Treasurer when assessors are required, and shall state from which of the aforesaid classes assessors ought, in his opinion, to be appointed ; but the Superintendent shall not request the appointment of any individual assessor.

7. An appointment made by the Colonial Treasurer of any assessor or assessors for an investigation shall not be open to question on the ground that it was not in accordance with these Rules, or does not give full effect to the requirements of these Rules.

INDEX.

	PAGE
ADJOURNMENT	
Court may adjourn hearing	38
impose terms	38
AIDS TO MEMORISING COLLISION REGULATIONS	49
APPEALS OR REFERENCES	
As to detention of unsafe ships	24
Foreign ship, right of appeal... ..	26
Jurisdiction of Court	20
Magistrates may be appointed to hear	24
Notice of appeal, mode of giving	32
when to be given... ..	24
Parties	32
Procedure, same as in inquiries	20
And see "Procedure"	
APPEAL TO GOVERNOR—In respect of detention of foreign ship	26
APPEARANCE	
On appeals or references	32
inquiries	31
ASSESSORS	
Appointment	7, 87
not open to question	88
where certificate in peril	7, 88
Classes of	87
Concurrence of, in order for detention	20
Court to be assisted by	7
Duties of	7, 17
Governor may add or withdraw name	8
make rules as to appointment, &c.	8
Have power to advise only	7
List of, in force for one year only	7
May survey unsafe ship	20
Mercantile marine masters	87
engineers	87
Qualifications	87
Rules as to appointment, &c.	87
power to make	8
Superintendent to inform Treasurer when required	88
state class required	88
"AUTHORITY"—Defined	74
BAILIFF—District Court Bailiff to act... ..	42
"BRITISH POSSESSION"—Defined	2
"BRITISH SHIP"—Defined	10

	PAGE
BRITISH SHIPS—When deemed unsafe	21, 22
CANCELLING AND SUSPENDING CERTIFICATES	
Powers of Court and how exercised... ..	10, 11
CASUALTIES—Inquiries as to	8
And see "Inquiries"	
"CERTIFICATE"—Defined	74
CERTIFICATES	
Disposal of cancelled or suspended	19, 78, 83
Effect of cancellation or suspension on others	19
Grant of, after cancellation or suspension	19, 76
Order in Council with respect to colonial	67
Particulars of, to be noted in decision of Court	18, 81
Powers of Court to cancel or suspend	10, 81
When cancelled or suspended to be delivered up ..	19
"COAST-TRADE SHIP"—Defined	2
COLLISION	
Duty of master in cases of	14, 27
Regulations for preventing	48, 58
COLONIAL CERTIFICATES, ORDER IN COUNCIL	
"Authority"—defined	74
Board of Trade instructions	80, 83
Cancellation involves cancellation of all others	78
Cancelled or suspended, to be sent to authority granting disposal of... ..	78 83
"Certificate"—defined	74
Certificates, form of	74
name of possession to be inserted	74
to be numbered consecutively	74
"Colonial Certificate of Competency"—defined	74
"Colonial Certificate"—defined	74
Fraudulent Certificates	78
Grant of Certificate after Cancellation or Suspension only upon proof of service at sea	76 75
Improperly granted, may be cancelled	77
Lists of Certificates to be sent to Reg. Gen. of Seamen	74
Not to be granted where former certificates cancelled	75
Suspended Certificate may be re-issued only by authority granting	78
Suspension involves suspension of all others	78
COMPELLING ATTENDANCE—Of parties and witnesses	10, 15
COMPUTATION OF TIME	41
CONSTITUTION OF COURT	7, 17
CONSULAR OFFICER	
Defined	26
May require that survey be made in presence of nominee	26
Service on, of order for provisional detention	26
COSTS	
In what cases awarded	39
Power to award	7, 39
Taxation	7, 40

INDEX

91

COURT

PAGE

Defined	29
Establishment of	5
Jurisdiction	5, 8, 20
President	16-17
Title	5
To be a court of record	5

DECISION OF COURT

Copy, may be supplied where certificate dealt with	40
to be sent to Governor	17, 39, 40
Dissent from, may be sent to Governor	17
To be delivered in open court	17

DETAINING OFFICER—To have powers of an Inspector... 25

DETENTION OF SHIPS—See "Unsafe Ships."

DISTRICT COURT

Acts and Rules to apply	5, 42
Judges may sit as Court of Marine Inquiry	7
Officers to be Officers of Court of Marine Inquiry	8, 42

ENGINEERS

Appointment as Assessors	7
Certificates, where cancelled or suspended	7, 19
Incompetency or misconduct...	8, 11, 13
Inquiry as to charges against	8, 11, 13
Wrongful acts or defaults, what are	13

EVIDENCE

Copy notes to be admitted on re-hearing	38
Method of taking down	34
Nautical skill, matters of, not admissible	17
Notes to be sent to Governor	17, 39, 40
Notice to admit	33
produce	33
Ordering witnesses out of Court	35
Questions in nature of cross-examination	36
Subpoenas to witnesses	34

FAILURE TO RENDER ASSISTANCE, &c., IN CASES OF COLLISION

On part of master or person in charge	14, 27
Deemed wrongful act, neglect, or default	14, 27

FEEs OF COURT—When payable ... 42

"FOREIGN-GOING SHIP"—Defined ... 2

FOREIGN SHIPS

Detention of Unsafe	25-26
right of appeal...	26
Ship sold to foreigner	21
When deemed unsafe	25

FORMS

Decision of the Court (8)	45
Minute-book (10)	47
Notice of appeal (1)	43
appearance	32
inquiry (5)	45
sitting of Court (2)...	43

FORMS— <i>continued.</i>	PAGE
Order for costs (9)	46
of Court for release or detention of ships (3)	44
Report of Judge (4)	44
Subpoena to witness <i>ad test.</i> (6)	45
<i>du. tec.</i> (7)	45
“HARBOUR MASTER”—Defined	2
HARBOUR TRUST—See “Sydney Harbour Trust Act ;” “Port Regulations”	
HIS MAJESTY’S SHIPS—Exemption of	5
INCOMPETENCY OR MISCONDUCT	
Cancellation or suspension of certificate	10, 11, 13, 27
Of master, mate, or engineer	11, 13
INQUIRIES	
Jurisdiction of Court	8, 10
when ousted	9
Parties to	13
Procedure	6, 17
Re-hearing at instance of the Governor	16
When to be held by the Court	15
And see “Procedure”	
INSPECTORS—Powers of	21
INTERPRETATION OF TERMS	
In Act	2-3
Rules	29
JUDGES	
District Court, may preside	7
Duties of	17
May appoint person to survey unsafe ship... ..	20
make rules	8
survey unsafe ship	20
President does not sum up	18
Senior Judge to preside	16
JURISDICTION OF COURT	
In inquiries as to shipping casualties	5, 8-10
respect of detention of unsafe ships	20
When ousted	9
“JURISDICTION, THE”—Defined	3
“JUSTICE”—Defined	2
KING’S SHIPS—Exemption of	5
“LEGISLATURE”—Defined	3
LIST OF ASSESSORS	
Governor may add or withdraw name	8
In force for one year only	7
MAGISTRATES—May be appointed to hear appeals	24
“MASTER”—Defined	3
MASTERS	
Appointment as assessors	7
Certificates, when may be cancelled or suspended	11
where cancelled or suspended	7, 19

INDEX

93

MASTERS—*continued.*

	PAGE
Duty of standing by and rendering assistance	27
Failure to render assistance, &c., in cases of collision ..	14, 27
Incompetency or misconduct... ..	8, 11, 13
May attend survey of unsafe ships	20
nominate person to attend survey	23
Service of process on	41
penalty for obstructing	41
Wrongful acts or defaults, what deemed	11, 12, 27

MATES

Appointment as assessors	7
Certificates, when may be cancelled or suspended	11
where cancelled or suspended ..	7, 19
Incompetency or misconduct... ..	8, 11, 13
Wrongful acts or defaults, what deemed	12, 13

"MERCHANT SHIPPING ACT"—Defined 3

MINUTE-BOOK—To be kept by registrar 42

NOTES OF EVIDENCE

How taken	34
Shorthand writer sworn to take correctly... ..	18, 34
To be sent to Governor	17, 39, 40

NOTICE OF APPEAL

To whom given	32
When to be given	24

NOTICE OF INQUIRY

Effect of service	31
To be given to parties ..	30

NOTICE TO ADMIT 33

NOTICE TO PRODUCE 33

OFFICERS OF COURT

Bailiff	42
District Court officers to act... ..	8
Registrar	42

ORDER FOR DETENTION—Service on master 25

ORDERING WITNESSES OUT OF COURT 35

OUSTER OF JURISDICTION 9

OWNER

Includes manager or secretary of company	3
May attend survey of unsafe ship	20
nominate person to attend survey	24

PARTIES

Adding, on rehearing	38
Appearance by leave of Court	32, 86
Court may compel attendance	10, 15
Non-appearance	34
To appeals or references	32
inquiries	31

"PASSENGER"—Defined 3

"PENALTY"	PAGE
For impeding survey	20
obstructing service on master	41
"PILOT"	
Defined	3
Not subject to jurisdiction of Court	27
POLICE MAGISTRATE—Appointment to act as Judge	24
"PORT"—Defined	3
PORT REGULATIONS	
Berthing of vessels	63
Boat races	64
Glebe Island bridge	65, 66
Navigation	59
Prymont Bridge	64, 65
Vessels in port	63
PRESIDENT OF COURT	
Senior Judge to be	16
To given decision in open Court	17
have casting vote	17
send copy decision, &c., to Governor	17
PROCEDURE	
APPEALS OR REFERENCES	
Addresses by parties	37
Adjournment of hearing... ..	38
Appeal, when notice to be given	24
Appellant to follow complainant	37
Assessor must concur in order for detention	20
to sign report, or report reasons for dissenting	20
Complainant to follow Superintendent	37
Court to send report to Governor	20, 34
Evidence in reply	37
Order for release or detention of ship	20, 37
Parties to	32
Procedure on, same as in inquiries	20
Reference to Court by Treasurer	24
Registrar to inform Judges when notice of appeal filed	30
send notice of hearing to parties	30
Report of Court to be sent to Governor	20, 34
survey to be produced by Superintendent	34
served on Master	24
Superintendent to begin... ..	37
give notice to complainant	30
produce report of survey	34
INQUIRIES	
Adjournment of hearing... ..	38
Assessors retire with Judge to confer as to decision	18
Conduct of	31
Decision, copy to be forwarded to Governor	17, 40
to be given in open Court	17, 18
Dissent from decision	17
Equality of votes	17
Hearing, to be in open Court	17
who may appear	31
Method of taking evidence	34

INDEX

95

PROCEDURE—Inquiries—*continued.*

PAGE

Notes of evidence to be forwarded to Governor	...	...	17
Parties	...	...	31
appearance by leave of Court	...	...	31, 83
may address the Court	...	...	36
non-appearance of	...	...	34
order in which to be heard	...	...	36
Registrar to give notice of hearing	...	...	30
Superintendent to begin	...	...	35
conduct inquiry	...	...	31
Who may appear	...	...	31

RE-HEARING

By order of the Governor	...	...	16
Copy decision, &c., to be sent to Governor	...	...	39
evidence on hearing to be admitted	...	...	38
Judges to fix time and place for	...	...	38
Parties may be added	...	...	38
Registrar to give notice to parties	...	...	38

“QUALIFIED PILOT”—Defined	...	...	3
---------------------------	-----	-----	---

REFERENCES

Treasurer may refer matter of provisional detention	...	...	24
And see “Appeals or References.”			

REGISTRAR—

Defined	...	...	29
To have custody of records	...	...	42
inform Judges when appeal or reference filed	...	...	30
keep minute book	...	...	42
seal all process	...	...	42
send notice of hearing to parties	...	...	30
re-hearing to parties	...	...	38
sign and issue all process	...	...	42

REGULATIONS FOR PORT OF SYDNEY—See “Port Regulations”

REGULATIONS FOR PREVENTING COLLISIONS AT SEA

Aids to memory	...	...	49
Breach, if collision ensues ship deemed in fault	...	...	48
to imply wilful default	...	...	48
Collision, risk of, how ascertained	...	...	55
rules for navigating	...	...	56
Distress signals...	...	...	58
Fog, sound signals	...	...	54
speed to be moderate	...	...	55
Harbour and inland navigation, reservation of rules for	...	...	58
Lights, rules concerning	...	...	49
Owners and masters bound to obey the regulations	...	...	48
Preliminary	...	...	49
Proof of regulations	...	...	48
Proper precautions must be observed	...	...	58
Reservation of rules for harbour and inland navigation...	...	...	58
Risk of collision, how ascertained	...	...	55
rules for navigating	...	...	56
Signals, distress	...	...	58
fog, &c.	...	...	54
Sound signals, for fog, &c.	...	...	54
vessels in sight of one another	...	...	57

REGULATIONS FOR PREVENTING COLLISIONS AT SEA—		PAGE
<i>continued.</i>		
Speed in fog, to be moderate...	...	55
Steam-vessel, defined ...	...	49
Steering and sailing rules ...	...	55
Under-way, defined ...	...	49
RE-HEARING		
By order of the Governor ..	...	16
Judges to fix time and place for ...	...	38
Registrar to give notice to parties ...	...	38
And see "Procedure—Re-hearing"		
REPEAL ...	...	1, 28
REPORT OF COURT		
To be sent to Governor ...	...	20, 24
signed by assessors ...	...	20
REPORT OF SURVEY		
To be made to the superintendent ...	...	23
served on the master ...	...	24
RULES OF COURT		
Date of taking effect ...	...	8
Directions where none...	...	8
Form and effect...	...	8
Power to make ...	...	8
Short title and commencement	...	22
SAVINGS—Of Acts, Rules, &c. ...	...	1, 9
SEAL OF COURT ...	...	42
"SERIOUS DAMAGE"—Not yet judicially interpreted ...	...	11
SERVICE OF PROCESS		
Mode of ...	...	41
Penalty for obstructing ...	...	41
Proof as to ...	...	42
Time for, not prescribed	...	41
"SHIP"—Defined ...	...	3, 4
SHIPS		
His Majesty's, exempted from jurisdiction of Court ...	...	5
Inquiries as to casualties affecting ...	...	8-10
References or appeals as to unsafe ...	...	20, 24
Service of process on board ...	...	41
And see "Survey of Ships" and "Unsafe Ships"		
SHIPWRECKS—Inquiries as to ...	...	8-10
SHORT TITLE		
Of Act ...	...	1
Rules ...	...	29
STANDING BY AND RENDERING ASSISTANCE		
History of provision ...	...	15
In collision, duty of master ...	...	14, 15, 27
neglect of master ...	...	14, 27
"STEAM-VESSEL"—Defined ...	...	4, 49

INDEX

97

	PAGE
STIPENDIARY MAGISTRATE —Appointment to act as Judge ...	24
SUBPENA —Issue of	34
SUPERINTENDENT	
Defined	3, 29
Duties as to detention of unsafe ships	22, 23
To conduct inquiries	31
give notice of hearing to complainant	30
produce report of survey	34
serve copy of report of survey on master	24
SURVEY OF SHIPS	
Colonial Treasurer may appoint surveyor... ..	20
Court and Assessors may make	20
Judge may appoint surveyor... ..	20
Owner and master, or nominee, may attend	20
Penalty for impeding	20
Powers of surveyors	25
Report of survey to be produced by Superintendent	34
served on Master	24
Where provisionally obtained	22, 23
SYDNEY HARBOUR TRUST ACT	
Not affected by Navigation Act	5
"THE JURISDICTION" —Defined	3
TIME —Computation of	41
TREASURER	
May refer matter of provisional detention to Court	24
request Court to hold inquiry	15
"UNDER WAY" —Defined	49
UNSAFE SHIPS	
Appeals or references as to	20, 24
Assessors must concur in order for detention	20
may survey	20
British ship, when unsafe	21, 22
Defined	21, 22, 25
Detaining officer's powers	25
Detention by the Court	20, 21
superintendent or police magistrate	22
not affected when register closed or transferred	21
Foreign ship, detention, right of appeal	26
when unsafe	25
Judge may survey or appoint surveyor	20
Jurisdiction of Court	20
Order for detention of British ship, service on master	25
foreign ship, service on consular officer... ..	26
Owner or master may appeal against detention	24, 26
Powers of Judge or other person making survey	20
Provisional detention by superintendent	22
Release by the Court	20
Report of survey, to be produced by superintendent	34
Survey by the Court	20
superintendent	22, 26
Surveyor's powers	25
Transfer of registry does not release ship	25

WITNESSES**PAGE**

Attachment	...	...	...	...	...	...	...	...	15, 34
Compelling attendance	...	...	...	...	...	...	...	...	10, 15, 34
Court may direct the Registrar to subpoena	...	...	...	...	...	...	...	...	34
Ordering out of Court	...	...	...	...	...	...	...	...	35
Questions in nature of cross-examination	...	...	...	...	...	...	...	...	36
Subpoenas to	...	...	...	...	...	...	...	...	34
Tender of expenses	...	...	...	...	...	...	...	...	34

WRONGFUL ACTS OR DEFAULTS

Cancellation or suspension of certificates	...	...	...	...	...	...	...	...	10, 11, 13
Of masters	...	...	...	...	...	...	...	...	11-12
mates...	...	...	...	...	...	...	...	...	12-13
engineers	...	...	...	...	...	...	...	...	13

WEBSDALE, SHOOSMITH AND Co., Printers, Sydney.



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